THE STATUS OF WOMAN IN WORLD RELIGIONS & CIVILIZATIONS

BY

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And of the Inner Temple, Barrister-at-Law

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With an Introduction by

AL-HAJJ LORD HEADLEY (AL FAROOQ)

&

STATUS OF WOMAN IN ISLAM

BY

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FOREWORD

TOWARDS the end of 1927 the British Muslim Society, London, invited me to deliver a lecture on "Islam's Attitude towards Women and Orphans". I thought the subject was admirable and of particular interest to all students of comparative religions and sociology. I gladly accepted the invitation, and at one of the winter-session meetings of the Society the lecture was delivered.

Subsequently, the lecture was published as a series of articles in the *Islamic Review*, commencing from July 1928.

In its present form, the thesis owes its existence to the patronage and generosity of the late Hajee Usoof Mohammed Sulaiman Botawala Charities Fund, of Rander, District Surat, India, which has defrayed the expenses of its publication. I was exceedingly fortunate in meeting Mr Ebrahim Usoof Botawala who was then on a short visit to London. I was able to impress him with the necessity of bringing out the lecture in the form of a booklet for free distribution in Great Britain and in India. He at once directed the manager of his father's well-known Trust in Bombay to pay the expenses of its publication, with the result that it is now before the reading public of Great Britain and India.

My sole object in dealing with the subject is that it is of perennial interest, especially so at the present moment when the dawn of a new era is visible in all Islamic countries. To the West, Islam has never been properly explained. Europe has never fully appreciated the beauties of Islam ---- the services which it has rendered to the spiritual, social, and cultural development of the world. A thick crust of misconception envelops the social aspect of Islam. The Woking Mission, through the inspiration and genius of its great founder, Al-Hajj Khwaja Kamaluddin, has been untiring in its efforts to break through such misconceptions, and often at times to destroy wilful misrepresentation. Our efforts, small as they have been and are, have resulted in an appreciable removal of ignorance about things Islamic. By the publication of this little volume I sincerely hope that it will tend to vindicate the teachings of the Holy

Qur'an and the great Arabian Prophet____ that in its treatment of woman Islam stands far and above all other religions and social systems.I have laid some stress on the legal aspect of the question, simply because the true criterion for comparative judgement consists of the rights and remedies which the law bestows on woman. In discussing the status of woman under Islam, I have not dealt with the subject from the standpoint of any particular school of thought (such as *Sunni* or the *Shi'ah*), but have taken a broad view of the subject, explaining the law as is to be found in the Qur'an and in the sayings of the Prophet. This book, it is submitted, has been written in a non-sectarian spirit_____that is, the true spirit of Islam.

If I succeed in removing some of those chronic misconceptions about Islam regnant in the West in particular and the world in general, my efforts will not have been in vain.

I owe my thanks to Al-hajj Lord Headley (Al-Farooq) for writing the Introduction to this little volume. Lord Headley more than any other British Muslim appreciates the social services of Islam, and as such his Introduction deserves careful perusal.

To Mr. Abdul Majid, acting Imam of the Mosque, Woking, Surrey, England, I owe my thanks for many helpful suggestions, and also for correcting the proofs and looking after the publication generally. I may add that without his assistance the appearance of this little volume would have been unduly delayed. I carry with me the fondest recollections of my association with him during my sojourn in England.

To the Librarian and Assistant Librarian of the Honourable Society of the Inner Temple, London, I owe my thanks for helping me generally in the writing of this book.

Finally, I must thank Mr. Ebrahim Usoof Botawala for so kindly responding to our appeal. In him the Rander Sunni Muslim Community has an enterprising member who has set a worthy example by encouraging the dissemination of Islamic teachings. He has proved himself to be a true friend of Islam.I sincerely hope that his worthy example will be emulated by others.

■ **C.A.SOORMA**

INTRODUCTION

I HAVE perused with great interest and enlightenment to myself the essay on "Islam's Attitude towards Women and Orphans" which Mr. C.A. Soorma has recently compiled.

It does not take long to ascertain that the author has been at great pains to collect information from many sources, the bibliography including excerpts from the works of the late Ameer Ali, Blackstone's *Commentaries,* Lecky's *History of European Morals,* The works of John Milton, Mayne, Hunter, Buhler's *Laws of Manu,* Mulla's *Principles of Hindu Law* and *Principles of Mohamedan Law*, and many others.

I welcome the appearance of this valuable addition to the literature on a subject which is just now attracting very much interest in the West. There is, I think, very little doubt that Islam is spreading westward_____a broadminded view of matters religious is marching in step with scientific discovery. The "necessity" for a belief in the dogmas of Christianity, the creations of monks and priests three hundred years after Christ's time, is no longer regarded seriously by thoughtful and reasonable people.

In the West there appears to me to be a healthy desire to sweep away all quite non-essential improbabilities from religion. No reasonable person now thinks that he will "perish everlastingly", or be cast into outer darkness where there will be "weeping and gnashing of teeth" merely because he fails to believe in the Divinity of Christ, the Trinity, the Sacraments, the Atonement and the "Immaculate Conception", and you would find it hard to convince any educated person that no prayers could possibly reach Almighty God except "through Jesus Christ our Lord". My belief is, and always has been, ever since I could think at all, that even supposing Moses and Christ and Muhammad____all of Blessed Memory____had never existed at all, my earnest prayers to my Almighty Father would have reached His ears just the same. Do I need introduction to the Author of my being? Will God cease to listen because there is no Prophet present?

Such thoughts as these convince me that the mind of the West, having discarded the man-made dogmas, is in a "receptive" condition. Some of the old scientists were wont to observe that "Nature abhors a vacuum," and looking at it in this way it may well be that the Western mind is ready to give credence to a religion in which the fairy tales and improbabilities are reduced to a minimum. Islam stands forth as a beacon light. Worship the one and only God, Allah our Protector and Nourisher. Surrender yourself to His Almighty Will, and try to be good and kind to all your fellow-creatures.

No more is required of the Muslim, whose spirit is guided by His Lord in Heaven, and the beautiful instructions given through the agency of Moses, Christ and Muhammad and the other Prophets from time to time divinely inspired by the Almighty.

Therefore, any instruction or writing which tends towards the receptivity of Islam in the West at the present favourable moment is worthy of the strongest encouragement and support. We should strike whilst the iron is hot. I consider that Mr. Soorma's work, backed up by the evidence of the well-chosen excerpts from various high authorities, is well calculated to remove many of the false ideas which have been spread about concerning the treatment of women under Islam. By showing up such fallacies as "Muslims worship Muhammad", "Muslims have to marry four wives," "Women have no souls," and "Women are not allowed inside Mosques," we are paving the way to a better understanding of what Islam really means, and showing how suitable it is as the religion or binding force of any God-fearing and self-respecting nation.

■ **HEADLEY (AL-FAROOQ).**

CHAPTER I

WOMEN UNDER ROMAN LAW

PERHAPS there is no other aspect of Islam which has been so bitterly____and wrongly___criticized, as its attitude towards women. Islam has been accused of having degraded woman; it is attacked as having reduced her status, socially, morally and spiritually; and above all, it is criticized for not having given to woman her rightful place as man's comrade and companion in life. To an unprejudiced student, however, the facts appear to be otherwise. A comparative study of woman under different religious and social systems will enable us to appreciate the great services rendered by Islam in raising her status, legally and socially, and with this object in view I now propose to sketch briefly the story of woman from historical times to the advent of Islam. I shall begin this most interesting study with the story of woman under Roman law.

Those who are familiar with Roman history know that the Roman family was based on the paternal power or *patria potestas*. As an institution, It is older than the State and formed an *imperium in imperio*. The head of the family was its sole representative, and he alone had any *locus standi* in the Councils of the State. Under Roman Law a daughter, by marrying and entering into another household, became subject to a different authority. Legally, she ceased to be a member of her father's family. Her children, similarly, became strangers to her father's hearth, and therefore no legal relationship existed between them and their grandfather's family. Again, sons released from their father's *potestas* ceased to be members of his family, (Hunter, *Introduction to Roman Law,* pp. 37-38).

The relation of husband and wife under Roman Law is of peculiar interest to us. This depended on the Roman's *manus* over his wife. *Manus* was the name for the rights that the husband possessed over his wife and which normally resulted on

marriage. A wife under her husband's *manus*, was called *materfamilias;* if not, simply *uxor* or *matrona* i.e. wife or matron, (Hunter *Roman Law,* p. 222).

Lecky says that there were three kinds of marriages among the Romans:

Firstly, there was the *Confarreatio*, which was celebrated before the Pontifex Maximus and Priest of Jupiter. This involved a very solemn religious ceremony and only the children of such a union were eligible for the higher priestly offices. This form of marriage was practically indissoluble and only patricians could be married under *Confarreatio,* (Lecky, *History of European, Morals,* vol. ii. pp. 322-23).

The second type of marriage was called *Coemptio in manum,* or marriage by sale. This was a purely civil contract, and the wife passed *in manus* to the husband by *mancipatio;* that is, by a fictitious sale. She was thus nominally *sold* to the husband and conveyed by the same forms as if she were a chattel real. The husband acquired complete authority over the person and property of his wife. Gaius says that her legal position in her husband's household was that of a daughter: "If a wife in any case, and for any reason, is in her husband's *manus,* it is decided that she obtains the rights of a *daughter*",(Gaius, i.115).

The third form of marriage was called *usus,* or prescription. This became general during the Empire. It was effected by a simple declaration of an intention to cohabit as man and wife. Under early Roman Law, the possession of a wife for a *whole* year gave the husband his *manus* over her by right of *usus*, just as he acquired his *potestas* over any other person or thing. The law of the XII Tables, therefore, provided that if a woman wished to escape this *manus,* then she should stay away for three nights each year (called *trinoctium*) in order to break off the *usus* of that year. This interruption in the period of his *manus* had a very important legal consequence, for although the woman was married, legally she was not under the guardianship of her husband, but of the father, she being not in *manu mariti or viri.* The wife thus gained absolute legal independence, with right to separate ownership of property independently of her husband. But the wife could not compel the husband to maintain her, nor had the husband any right or

control over the wife's property, (Hunter, *op. cit.*, p. 223; Buckland, *Text-book of Roman Law*, pp.102-103).

In early times in Rome there was no necessity to obtain the authority of any tribunal for the dissolution of marriage. By a simple intimation, either party could at once terminate the union. This undoubtedly led to a great number of divorces, and marriage, as a social institution, degenerated because of the looseness of the tie.

Although polygamy was not legalized, yet Ameer Ali, in his *Life and Teachings of Muhammad,* p. 219, says: "After the Punic triumphs, the matrons of Rome aspired to the common benefits of a free and opulent republic, and their wishes were gratified by the indulgence of fathers and lovers."

Marriage soon became a simple practice of concubinage which was recognized by the law of the State.

"The freedom of women and the looseness of the tie which bound men to them, the frequency with which wives were changed or transferred, betoken in fact the prevalence of polygamy only under a different name", (Ameer Ali, *op. cit.*, p. 220; also Howard, *A History of Matrimonial Institutions,* vol. ii. pp. 14-19).

A Roman kept several concubines and slaves who were either purchased in the open markets of Rome or were captives of war. Children born of these slaves could not be properly called Roman citizens, unless their father was subsequently married to their mother. There is no doubt that a species of morganatic marriages had grown up in Rome and was a popular institution. One of the chief causes of the decline of the Imperial power of Rome was the prevalence of licentiousness and luxury in many of its undesirable forms. The social life of the Romans, even at the height of their glory, was not free from those vices and corruptions, which, very often, come into existence with pride of power and conquest. The presence of houses for immoral purposes, the fondness for nude and vulgar paintings and sculptures which I have myself seen in the ruins of Pompeii, all indicate the low status which woman occupied in Roman society for many centuries.

This, in spite of the praises of the poets and the eulogies of the dramatists who idealized the Roman woman by putting her

on a pedestal; but as a matter of fact, she never did occupy that eminent position.

To sum up the status of Roman woman, we observe the following characteristics:

(1) No woman could be without a guardian.

(2) When unmarried, she was under the perpetual *tutelage* of him who exercised *patria potestas* over her.

(3) No marriage could take place without the consent of the father.

(4) In early times a father could even kill his son or daughter for disobedience or misconduct.

(5) She became her husband's property in the truest sense of the term, being sold and conveyed in *Coemptio in manum* in much the same manner as goods were sold and delivered by means of "the copper and the scales."

(6) The husband could kill his wife for misconduct and adultery.

(7) The wife's property passed to the husband on marriage, except the *Dos* which reverted to her on divorce. This happened only in cases where the wife was in *manu viri*, but not otherwise.

(8) No civil or public office could be held by a woman.

(9) She could not adopt, nor could she be a surety or a tutor; this continued until the end of the fifth century A.D.

(10) When in *manu viri,* she had to renounce all claims to paternal love and relationship.

Such was the status of woman as given by historians in an Empire which is considered to have been the most magnificent and civilized, and from which modern Europe has adopted many laws and is proud of having done so.

■

CHAPTER II

WOMEN IN GREECE

WHEN we turn our attention to early Greece, we find that even there the position of woman was about the same, if not worse. Apart from the glowing pictures painted by Homer and perpetuated by tragedians, the custom of *selling* daughters in marriage was general. The husbands appear to have indulged largely, and with little or no censure, in concubines. The superiority of man over woman was vehemently asserted on all sides. In the historical age of Greece, the legal position of women had in some respects slightly improved, but their moral condition had undergone a marked deterioration. All virtuous women lived a life of perfect seclusion.

It seems that the Greeks recognized two distinct orders of womanhood. There was firstly, the wife whose first duty was fidelity to her husband, and secondly, there was the *hetaera* or mistress "who subsisted by her fugitive attachments." The wives, living in seclusion, occupied their time in weaving and spinning and other household duties. They lived in a retired part of the house to which strangers had no access and the wealthier women seldom went abroad and never except when accompanied by a female slave. They never attended any public functions, received no male visitors, except in the presence of their husbands, Lecky says that after the age of Plutarch the position of the virtuous Greek woman was a very low one. She, like her Roman sister was under a perpetual *tutelage*; first of all, to her parents who disposed of her hand, then to her husband, and in the days of the widowhood to her sons. In cases of *inheritance,* her male relatives were preferred to her. According to Westermarck, there also existed a general notion that she was naturally more vicious, more addicted to envy, discontent, evil-speaking and wantonness than the men. Even Plato classed woman together with children and servants, and states generally that in all the pursuits of mankind, the female sex is inferior to the male. Euripides, the great dramatist, puts into the mouth

of his Medea the remark that "Women are impotent for good, but clever contrivers of all evil", (Lecky, *op. cit.,* vol.ii.p.306; Westermarck, *origin and Development of the Moral Ideas,* vol.i.p.662).

Contrasted with the virtuous Greek wife was the brilliant and polished courtesan. Learning and education were mostly confined to the *hetaerae.* Prostitution is said to have entered into the religious rites of Cyprus, Biblis, Corinth and Lesbos. Mitylene and Tenedos became notorious for their schools of vice which grew up under the shadow of the temples.

"Gathering around her the most brilliant artists, poets, historians and philosophers, she (i.e. the Greek courtesan) flung herself unreservedly into the intellectual and aesthetic enthusiasms of her time, and soon became the centre of a literary society of matchless splendour. It is said that Aspasia, one of the cleverest and most beautiful courtesans of her time, won the passionate love of Pericles, while Socrates believed himself to be deeply indebted to the instructions of a courtesan named Diotima", (Lecky, *op, cit., vol ii.* p.310).

In Sparta, such women as could not be expected to give birth to healthy children were often destroyed by order of the State, with the result that the proportion of women to men decreased to such an extent that one wife had several husbands. It was also ordered, says Lecky, that the old or infirm husbands should cede their young wives to a stronger man, who could produce vigorous soldiers for the State, (Lecky, *op.cit.,* pp.306-308).

CHAPTER III

WOMEN IN CHINA AND PERSIA

In China, according to Westermarck, the condition of woman has always been inferior to that of man, and no generous sentiment tending to the amelioration of her social position has ever come from the Chinese sages. Her children must pay her respect, but she in turn owes to her husband the subjection of a child; a wife is an infinitely less important personage than a mother in the Chinese social scale, (Westermarck, *op, cit.,* vol. i.p.647). Perhaps this idea of the inferiority of woman to man is mainly responsible for the cruel Chinese custom of squeezing women's feet in shoes of lead and iron, thereby producing an unnatural deformity in size. I am told that this custom existed so as to disable Chinese women from running away from their homes. This cruel practice has now been abolished in China.

Howard, speaking of the Chinese law relating to divorce says: "By Chinese law divorce *must* be granted in case of any of the numerous impediments to marriage, or when the wife is guilty of adultery. For that offence the aggrieved husband may kill the offending wife and her paramour, if he catch them *in flagrante delicto.* But should the woman not be slain, she is punished, and the husband may drive her away, or even sell her as a concubine, provided he has not pandered to the crime or does not sell her to the guilty man. Furthermore, a marriage may be dissolved by mutual agreement; and the husband is entitled to a divorce when the wife strikes him, is addicted to drunkenness or opium-smoking, has been defiled before marriage; or when she leaves his house against his will. Besides all these grounds, *established by statute or recent usage,* Confucius allows the husband a divorce for any of the seven faults of the wife: barrenness, wantonness, inattention to parents-in-law, talkativeness, theft, jealousy, and inveterate disease such as leprosy."

It seems that in special circumstances, such as the family growing rich during the marriage or the absence of any relative

to receive the wife, if divorced, the above seven reasons would not constitute a valid ground for divorce, and the husband has to retain the wife.

"Normally," proceeds Howard, "the wife cannot sue for divorce; still practically she enjoys the right of separation in several important contingencies. Under judicial approval, for instance, she may release herself from the marriage bond in case of three years' desertion without word from her husband. So likewise, when she suffers grave insult from the husband's parents, she may return to her own family, reclaim her dotal gift and demand a contribution for her support'" (Howard, *op.cit.*, pp. 235-237).

Formerly, in Japan, woman was regarded more as a chattel than as a human being. But public opinion and education has now raised her status, and she is now called "the honourable lady of the house." The law of divorce in modern Japan is regulated according to the principles of Western law.

Although the *Zoroastrian Yasts* speak of a holy woman as being "rich in good thought, good words, and good deeds, well principled and obedient to her husband," the history of Persia is another example of the depravity of those times. The great reforms of Zoroaster had gone by the board and the morals of Iran had degenerated to an unspeakable extent.

"The climax was reached when Mazdak, in the beginning of the sixth century of Christian era, bade all men to be partners in riches and *women*, just as they are in fire, water and grass; private property was not to exist; each man was to enjoy or endure the good and bad lots of this world. The lawfulness of marriage with *sisters* and other blood-relations had already been recognized by Mago-Zoroastrianism. The proclamation of this frightful communism revolted some of the nobler minds, even among the Persians. The successor of Zoroaster, as Mazdak styled himself, was put to death; but his doctrines had taken root, and from Persia they spread over the West", (Ameer Ali, *op,cit.*, pp 9-10).

One has only to read the great Persian poets, Firdausi and Nizami, to realize the moral depravity of ancient Persia before the introduction of islam. Their writings prove conclusively the great social services rendered by Islam in elevating the status of woman in Iran. ■

CHAPTER IV

WOMEN UNDER BUDDHISM

BUDDHISM, which claims, and perhaps rightly, to be a high ethical and idealistic order, has not assigned to woman any definite place, nor has it recognized the equality of the sexes. It has done very little towards the exaltation of the position of woman. The life of Gautama Buddha shows that he could not find in woman a helpmate and a comrade. The mere fact that Buddha could not attain *Nirvana* while in the company of his beautiful wife and surrounded by family ties clearly indicates the inferiority of woman as man's better half and partner in life. What a gulf yawns in this respect between the great Gautama and the Prophet Muhammad ! The orphan of Ameena found in his aged wife Khadijah solace and comfort at the most critical moment of his life.

Buddhism teaches asceticism and monasticism. It also lays great stress on celibacy. Buddha succeeded in removing all distinctions of caste which flourished and still flourishes under Brahminism; but he apparently left the question of the relation of the sexes somewhat severely alone. According to Westermarck, "To the Buddhist, women are of all the snares which the tempter has spread for men the most dangerous; in women are embodied all the powers of infatuation which bind the mind of the world", (Westermark, *op. cit.,* vol. i. p. 662)

According to yet another authority, a very learned jurist in Burmese Buddhist Law, the late U May Oung, "the very idea of wedlock and its attendant worldly life is opposed to the ultimate end of Buddhism – the annihilation of Desire; and notwithstanding that the Buddha, in his discourses to the laity, laid down rules of conduct to be observed by married persons, parents and children, yet he was careful to impress upon his hearers the need for keeping in mind the spiritual life. Thus, while commending him who supports his father, mother, wife and offspring, he at the same time indicates the goal of *Nirvana*

the striving for which must necessarily involve celibacy", (May Oung, *Buddhist Law* Part I, p. 2).

But even Buddha could not change human nature. His teachings, admittedly highly moral and spiritual, lack that fundamental insight into human nature which a social reformer ought to possess. It is useless for a would-be reformer to speak simply in terms of high idealism and ethics without laying down the law as regards the necessary relationship of the sexes. This is why, although Buddha himself extolled celibacy, we find Buddhists after his death enjoying all the bliss and happiness of matrimony. Had it been otherwise, it is obvious that Buddhism could not have spread so rapidly and extensively as to cover nearly half the world's total population.

Polygamy and concubinage are sanctioned by Buddhist customary law, and no legal restrictions are placed on the number of wives a man might have. In Burma, which is a Buddhist country, the customary law is derived mainly from the laws of Manu, the Rishi, who was a Brahmin. The various *Dhammathats,* the chief of which is the *Manugye,* lay down elaborate rules as regards marriage, divorce, inheritance, etc. Local customs, undoubtedly, have influenced the original character of the Laws of Manu, with the result that in Burma the status of woman is much higher than among the Hindus. But even then up till a few years ago the position of woman was, comparatively speaking, very low. In this connection, the learned author above-cited, says: "Many kings of Burma, in their anxiety to preserve dynastic purity, were guilty of practices which would certainly not be tolerated at the present day, and which, even in the days gone by, were confined to the royal family. Thus the union of uncle and niece, nephew and aunt, half-brother and half-sister, was permitted, and in traditionary accounts we even read of a *marriage* between full brother and sister ! In the case, however, of marriage with a brother's widow, common in the case of kings and chiefs, officials and others followed their example to a certain extent, and instances have been known at the present day — though rare; on the other hand marriage with a deceased wife's sister—almost in all cases a younger sister—is considered most proper, the chief reason being that the children will not be given to, a stranger as stepmother. As regards cousins, generally speaking, union with agnates is strongly

deprecated, while that with other cognates is not looked upon with disfavour, provided the woman is on the same line as the man or below it. The writer has come across instances of a man *marrying* his deceased wife's mother, and another his deceased son's wife---but such have been very properly looked down upon. No case has arisen in which the validity of a marriage has been questioned on the ground of consanguinity or affinity, and when one does a considerable body of evidence will have to be led to prove prevailing customs", (May Oung, *op. cit.*, Part I, p.5).

I am glad to admit, however, that with greater female education in Burma, women have made, and are now making, considerable headway. They have always fought for their rights and have obtained them. Thus we see that the laws, of divorce, for instance, are just and fair. The husband cannot divorce the wife at will or "by caprice." Divorce by mutual consent is very common. Again, their laws of inheritance are equitable, the women sharing equally with men. In all these respects, as we shall see, the Burmese women are better placed and protected than the Hindu women.

■

CHAPTER V
WOMEN UNDER HINDUISM

Now let us turn our attention to the status of woman under Hindu Law.

Manu, the Hindu lawgiver, speaking of the duties and characteristics of women, says, (N.B.-Manu's authority is paramount throughout India among Hindus): –

(a) "By a girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house", (Manu, v.147).

(b) "In childhood a female must be subject to her father, in youth to her husband, when her lord is dead to her sons; a woman must never be independent", (Manu, v.148). (Note the striking resemblance to the status of woman under Roman and Greek laws, as given previously.)

(c) "She must not seek to separate herself from her father, husband or sons; by leaving them she would make both (her own and her husband's) families contemptible", (Manu, v.149)

(d) "Him to whom her father may give her, or her brother with the father's permission, she shall obey as long as he lives, and when he is dead, she must not insult (his memory)", (Manu, v.151).

(e) "Though destitute of virtue, or seeking pleasure (elsewhere), or devoid of good qualities, (yet) a husband must be constantly worshipped as a god by a faithful wife", (Manu, v.154).

(f) "Through their passion for men, through their untamable temper, through their natural heartlessness, they become disloyal towards their husbands however carefully they may be guarded in this world", (Manu, ix.14).

(g) "(When creating them) Manu alloted to women (a love of their) bed, (of their) seat and (of) ornament, impure desires, wrath, dishonesty, malice, and bad conduct", (Manu, ix.17)

(h) "It is the nature of women to seduce men in this (world); for this reason the wise are never unguarded in (the company of) females", (Manu,ii.213).

(i) "For women are able to lead astray in (this) world not only a fool, but even a learned man, and (to make) him a slave of desire and anger", (Manu, ii.214).

(j) "One should not sit in a lonely place with one's mother, sister, or daughter; for the senses are powerful, and master even a learned man", (Manu, ii.215).

Poor woman! Her lot is unpleasant indeed. The texts I have quoted indicate clearly the extremely inferior status which woman occupied under Hindu Law. At no period in her life is she to become free and independent. She is to remain under the perpetual *tutelage* of her male relations as long as she lives. She is born to seduce men and lead them astray, and not even a father is safe from his daughter, nor a son from his mother!

There is a good deal of controversy as to whether polygamy is sanctioned by Hindu Law. According to Manu, the law on the subject is as follows: –

(a) "For the first marriage of twice-born men (wives) of equal caste are recommended; but for those who through desire proceed (*to marry again*) the following females, (chosen) according to the (direct) order (of the castes) are most approved." (Here follows the list of women who may be approved of.) (Manu, iii.12.)

(b) "If, after one damsel has been shown, another be given to the bridegroom, *he may marry them both* for the same price; that Manu ordained", (Manu, viii.204).

(c) "If twice-born men wed women of their own and of other (lower castes), the seniority, honour, and habitation of those (wives) must be (settled) according to the order of the castes (varna)", (Manu, ix.85).

(d) "Among all (twice-born men) the wife of equal caste alone (not a wife of a different caste by any means), shall personally attend her husband and assist him in his daily sacred rites", (Manu, ix.86).

(e) "But he who foolishly causes that (duty) to be performed by another while his wife of equal caste is alive, is declared by

the ancients (to be) as (despicable) as a *Kandala* (sprung from the) Brahmana caste", (Manu, ix.87).

The above quotations clearly indicate that Manu sanctioned polygamy, "and it is now quite settled in the courts of British India that a Hindu is absolutely without restriction as to the number of his wives, and may marry again without his wife's consent, or any justification, except his own wish", (Mayne, on *Hindu Law and Usage*, p.113. Also held in the case of Viraswamy v. Appaswamy, 1 Madras H.C., at p.378).

Child-marriages appear to be sanctioned by Manu, as is evident from the following text: –

"A man aged thirty years shall marry a *maiden of twelve* who pleases him, or a man of twenty-four a *girl eight years of age;* if *(the performance of) his duties would (otherwise) be impeded, (he must marry) sooner",* (Manu, ix.94).

The abuses of child-marriage among certain Hindus is too well-known to need emphasis here. Let us hope that with greater education this evil custom will soon disappear.

As regards the remarriage of *widows*, there appears to be some doubt as to whether Hindu Law sanctions it or not. Narada another Hindu lawgiver, expressly sanctions it, while the authority of Manu is strongly opposed to it. Manu says: –

(a) "At her pleasure let her *emaciate* her body by (living on) pure flowers, roots and fruits, but *she must never even mention the name of another man after her husband has died",* (Manu, v.157).

(b) "Until her death let her be patient (of hardships), self-controlled, chaste, and strive (to fulfil) that most excellent duty which (is prescribed) for *wives who have one husband only",* (Manu, v.158).

(c) "The nuptial texts are applied *solely to virgins,* and nowhere among men to females who have lost their virginity, for such (females) are excluded from religious ceremonies", (Manu, viii.226).

The only exception which he appears to allow is in the case of a girl whose husband has died before consummation, who may be married again to the brother of the deceased bridegroom:

> "If the (future) husband of a maiden dies after troth verbally plighted, her brother-in-law shall wed her according to the following rule." (Here follows the rule.) (Manu, ix.69).

It may, therefore, be safely asserted that among the high caste Hindus, especially among the Brahmins, remarriage of widows is non-existent, as it is prohibited. On the other hand, among the lower castes, widows are permitted to remarry, (Mayne, *op. cit.*, pp.115-116). This Brahmanical prohibition was once carried to such an extreme that a widow was enjoined and sometimes forcibly burned on the funeral pyre along with her husband's body, or, if he died at a distance, was burned on a pyre of her own. Akbar, the Great Mogul, prohibited it, and after the decay and fall of the Mogul Empire this barbarous custom regained its old hold, and it was not until 1829, when Lord William Bentinck, the then Governor-General of India, made *Suttee* culpable homicide, that it died out, (*Chamber's Encyclopaedia, vol.ix.p.793).*

As regards the wife's *legal status* and her right to separate ownership of property, let me quote the following in support of the contention that Hindu Law does not recognize her as a *feme-sole* for many purposes: –

> "He only is a perfect man who consists (of three persons united) --- his wife, himself, and his offspring; they (says the Veda) and (learned) Brahmanas propound this maxim likewise—'*the husband is declared to be one with the wife*'", (Manu, ix.45).

"As under the Roman Law, '*Nuptiae sunt divini juris et humani communicatio*' the wife's gotra (relatives) becomes that of her husband; her complete initiation is effected by her marriage; she renounces the protection of her paternal manus and passes into the family of her husband. The connection being thus intimate, there should be no litigation between the married pair, and according to Apastamba there can be no division between them. Any property which the married woman may acquire is usually her husband's. A thing delivered to her is effectually delivered to the husband, and what is received from her is as if received from him. Her full ownership of her *stridhan* (i.e. generally property given to her by her relatives and husband on

marriage for her own use) is subject to the qualification that her husband may dispose of it in case of distress, and that her own power to alienate it is subject to control by him, with the exception of the so-called *Sandayakam,* the gifts of affectionate kinsmen. ...The identity between the married couple being thus complete ...wealth is common to the married pair", but this constitutes in the wife (according to Jagannatha) only a secondary or subordinate property. "Her right in the husband's estate is not mutual like the co-extensive rights of united brethren. It is dependent on the husband's and ceases with its extinction. *Her legal existence is thus, in some measure, absorbed during her coverture in that of her husband",* (West and Majid, *Hindu Law,* pp.85-86).

(a) Under the *Mitakshara* law of succession "the widow takes only a limited interest in the estate of her husband, called the widow's estate. On her death, the estate goes, not to her heirs, but to the next heirs of her husband, technically called *reversioners.* She is entitled only to the *income* of the property inherited by her. She has no power to dispose of the *corpus* of the property except in certain cases (e.g. in case of legal necessity). She may, however, alienate her life interest in the estate", (Mulla, *Principles of Hindu Law,* p.34).

(b) According to the *Mayukha* School the widow comes in after the son, son's son (where father is dead), son's son's son (where father and grandfather are both dead), (Mulla,*op.cit.*,p.91).

(c) According to the *Dayabhaga* School, again, the widow comes in after the son, grandson and great-grandson, (Mulla, *op.cit.,* p. 100).

"The remarriage of a widow, though now legalized by the *Hindu Widows Remarriage Act of 1856, devests* the estate inherited by her from her deceased husband. By her second marriage she forfeits the interest taken by her in her husband's estate, and it passes to the next heirs of her husband as if she were dead. The reason is that a widow succeeds as the surviving half of her husband and she ceases to be so on remarriage. But a widow does not by remarriage lose her rights to succeed to the estate of her *son* by her first husband", (Mulla, *op. cit.,* p. 34).

Right of the Hindu Widow to the Guardianship of Children by the Previous Husband. — It is provided by Section 3 of the *Hindu Widows' Remarriage Act,* 1856, that on a widow's remarriage, any relation of the deceased husband can apply to the proper Court for appointment of the Guardian for his children, and the case shall be disposed of as if the children had neither father nor mother. *So the result is that on remarriage the mother ceases to be a mother in the eye of the law,* and the Allahabad High Court in *Khusali v. Rani* 1882, 4 Allahabad, p. 195, held that ordinarily a widow after remarriage is not entitled to the guardianship of the children unless there was some good cause. Such good cause was found in a Calcutta case, *Ganga Prasad Sahu v. Jhalo* (1911), 38 Calcutta, p. 862, when at the time of the remarriage the son was an *infant*, and their Lordships came to the conclusion that the mother was entitled to guardianship, *not because she was still the mother,* but for the reason that the Court could appoint even a *stranger* as guardian, and there being a good cause why the stranger mother should not be made a guardian, their Lordships decided the case in her favour, (*All-India Reporter,* May 1929, p. 38).

Under the *Mitakshara* law, the daughters do not take as joint-tenants with benefits of survivorship, but they take as tenants-in-common. In the Bombay Presidency, the daughter does not make a limited estate in her father's property, but takes the property absolutely. On her death, her share passes to her own heirs as her *stridhan*, (Mullah, *op. cit.,* p. 85).

This rule, with some modifications, is also adopted by the *Mayukha* and *Dayabhaga* schools of Hindu Law, (Mulla, *op. cit.,* pp. 91 and 100).

But it must be noted that *daughters do no inherit until all the widows are dead.* This principle is accepted by all the main schools of law. Speaking generally, as between daughters, the inheritance goes first to the unmarried daughters; next, to daughters who are married and unprovided for; and lastly, to daughters who are married and well-to-do. No member of the second class can inherit while any member of the first class is in existence, and no member of the third class can inherit while any member of the first or the second class is in existence, (Mulla, *op. cit.*, p. 36).

"Divorce is not known to the general Hindu Law. The reason is that a marriage, from the Hindu point of view, creates an indissoluble tie between the husband and the wife. Neither party, therefore, to a marriage can divorce the other unless divorce is allowed by custom..... Change of religion or loss of caste does not operate as a dissolution of marriage, nor does the adultery of either party, nor even the fact that the wife has deserted her husband and become a prostitute", (Mulla, *op. cit.*, p. 427).

In this respect, as we shall see a little later, the attitude of Hindu Law resembles very much the attitude of the Roman Catholic Church, both regarding marriage as a sacrament, and holding the union of male and female to be indissoluble.

Obviously, as we have seen, the status of woman is very inferior under Hindu Law. The contrast is more significant when we compare her status to the status occupied by the Buddhist women, although, curiously enough, their status under both the systems of law is supposed to be based mainly upon the same laws of Manu! Why such a strong contrast should exist it is not possible to discuss here. That it does exist is clear, it is suggested, from the above comparative study.

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CHAPTER VI

WOMEN UNDER JUDAISM

ACCORDING to Westermarck, "the Hebrews represented woman as the source of evil and death on earth."

"Of the woman came the beginning of sin, and through her we all die", (Ecclesiasticus xxv. 2:24. Westermarck, *op. cit.,* p. 662).

That woman occupied a very inferior status in Hebrew Society is clear, not only from a perusal of the Old Testament, but also the writings of other historians. For instance, Lecky, speaking of the depreciation of the character of woman by Christian ecclesiastics, attributes it to the influence of Judaism. He says :

"In this tendency we may detect in part the influence of the earlier Jewish writings, in which it is probable that most impartial observers will detect evident traces of the common Oriental depreciation of woman. The custom of purchase-money to the father of the bride was admitted. Polygamy was authorized and practiced by the wisest men on an enormous scale. A woman was regarded as the origin of human ills. A period of purification was appointed after the birth of every child; but, by a very significant provision, it was twice as long in the case of a *female* as a male child, (Lev. 12: 2-5). 'The badness of men', a Jewish writer emphatically declared, 'is better than the goodness of women'. The types of female excellence exhibited in the early period of Jewish history are in general of a low order, and certainly far inferior to those of Roman history or Greek poetry; and the warmest eulogy of a woman in the Old Testament is probably that which was bestowed upon her who, with circumstances of the most aggravated treachery, had murdered the sleeping fugitive who had taken refuge under her roof", (Lecky, *op. cit.,* ii. p. 357).

"By the Jewish law," says Howard, "as it still existed at the dawn of the present era, divorce was the one-sided privilege of

man, (Deu. 24 : I-4). At most there was only a faint trace of the woman's later right, sanctioned by the Talmud, of demanding a separation. Legally, for the slightest reason, as the school of Hillel justly maintained, the husband could put away the wife by simply handing her a 'get' or a bill of divorce. By the written law only in two cases, for grave misconduct, was he deprived of this power, though in practice there were several ameliorating conditions which tended to put a check upon arbitrary action. Thus, while divorce was a private transaction, certain formalities had to be observed in connection with the 'get' which secured the restraining influence of publicity; and in case the wife was unjustly repudiated, the dower, representing the ancient *mohar*, or purchase – price of the bride, had to be paid to her from the husband's property", (Howard, *op. cit.*, pp. 12-14).

Polygamy among Jews continued right up to the twelfth century. "An express prohibition of polygamy was not pronounced until the convening of the Rabbinical Synod at Worms, under the celebrated Rabbi Gershom ben Juda, at the beginning of the eleventh century. Though this prohibition was originally made for the Jews living in Germany and Northern France, it was successively adopted in all European countries. Nevertheless the Jewish Marriage Code retained many provisions which originated at a time when polygamy was still legally in existence", (Mielziner, *The Jewish Law of Marriage and Divorce*, p. 30).

Turning to the influence of Judaism on the Old Testament, we may take but one characteristic example. In I Samuel we find that Saul hated David :

(a) "And the women answered one another as they played, and said, Saul hath slain his thousands, and David his ten thousands", (18:7).

(b) "And Saul was very wroth, and the saying displeased him; and he said, They have ascribed unto David ten thousands, and to me they have ascribed but thousands: and what can he have more but the kingdom?", (18:8).

(c) "And Saul *eyed* David from that day and forward", (18:9).

(d) "And Michal Saul's daughter loved David : and they told Saul, and the thing pleased him", (18:20).

(e) "And Saul said, *I will give him her, that she may be a snare to him,* and that the hand of the Philistines may be against him. Wherefore Saul said to David, Thou shalt this day be my son-in-law in the one of the twain", (18:21).

What a poor conception of parental love! What a degradation for woman! Saul, a patriarch, firmly believed that his own daughter Michal, who was a good woman herself, could be a snare for a righteous man like David, who was a man after God's own heart. But such is the Jewish temperament that it did not until very recent times tolerate for woman a more generous and charitable status than the one to which she has been subjected by the Old Testament.

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CHAPTER VII

WOMEN UNDER CHRISTIANITY

TURNING our attention to the position of woman under Christianity, we are amazed to find the deep injustice under which she has been suffering since the time of the Master. The present status of woman in *Christian* countries in the West has not been achieved by *Christian* reformers, but by social and political thinkers who, realizing the iniquities of the situation, have swept aside the Biblical notions of the inferiority of woman to man.

We shall begin this argument by depicting the story of the fall of man, as given in the Bible.

(a) "And I will put enmity between thee and the woman and between thy seed and her seed : it shall bruise thy head, and thou shalt bruise his heel", (Gen. 3:15).

(b) "Unto the woman He said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; *and thy desire shall be to thy husband, and he shall rule over thee*", (Gen. 3:16).

(c) "And unto Adam He said, *Because thou hast hearkened unto the voice of thy wife,* and hast eaten of the tree, of which I commanded thee saying, thou shalt not eat of it, cursed is the ground for thy sake; in sorrow shall thou eat of it all the days of thy life", (Gen. 3:17).

Again, while discussing the relative importance of the sexes, the Bible says :

(a) "For the man is not of the woman, but the woman of the man", (1 Cor. 11:8).

(b) "Neither was the man created for the woman, but the woman for the man", (1 Cor. 11:9).

(c) "For this cause *ought the woman to have power on her head,* because of the angels", (1 Cor. 11:10).

In the First Epistle of Paul the Apostle to Timothy we again find the following :

(a) "I will therefore that men pray everywhere, lifting up holy hands, without wrath and doubting", (I Tim. 2:8).

(b) "In like manner also, that women adorn themselves in modest apparel, with *shamefacedness and sobriety*; not with braided hair, or gold, or pearls, or costly array", (1 Tim. 2:9).

(c) "Let the women learn in silence with all subjection", (1 Tim. 2:11).

(d) "But I suffer not a woman to teach, nor to usurp authority over the man, but to be in silence", (1 tim. 2:12).

(e) "For Adam was first formed, and then Eve", (1 Tim. 2:13).

(f) *"And Adam was not deceived, but the woman being deceived was in the transgression*, (1 Tim. 2:14).

Thus Paul, the premier Saint of Christendom, allots to woman a status inferior to that of man. Woman is here made the scapegoat for her as well as Adam's sin. But for Eve, Adam would not have been banished from the Garden of Eden, nor would there have been any necessity for the expiation of the original sin by the subsequent "crucifixion of Jesus Christ, the son of God!" Poor woman! What a world of difference there is in this story and the story as given in the Qur'an. In the latter, as we shall see very soon, the fall of man was due, not solely to the weakness of Eve, but to the weakness of *both* Adam and Eve. Both were transgressors, and both suffered.

Westermarck, commenting on this story, says :

"Tertullian maintains that a woman should go about in humble garb, mourning and repentant, in order to expiate that which she derives from Eve, the ignominy of the first sin and the odium attaching to her as the cause of human perdition. 'Do you know that you are each an Eve? The sentence of God on this sex of yours lives in this age; the guilt must of necessity live too. You are the Devil's gateway; you are the unseater of that forbidden tree, you are the first deserter of the divine law, you are she who persuaded him whom the Devil was not valiant enough to attack; you destroyed so easily God's image, Man. On account of

your desert --- that is, death ---- even the Son of God had to die,'" (Westermarck, *op. cit.,* pp. 662-3).

This is strong language indeed, but that woman was unfairly denounced and horribly persecuted during the early days of Christianity is amply clear. For instance, Lecky says :

"The combined influence of the Jewish writings, and of that ascetic feeling which treated women as the Chief source of temptation to man, was shown in those fierce invectives against this sex which form so conspicuous and so grotesque a portion of the writings of the Fathers and which contrasts so curiously with the adulation bestowed upon particular members of the sex. Woman was represented as the door of hell, as the mother of all human ills. She should be ashamed at the very thought that she is a woman. She should live in continual penance, on account of the curses she has brought upon the world. She should be ashamed of her dress, for it is the memorial of her fall. She should be especially ashamed of her beauty, for it is the most potent instrument of the demon. Physical beauty was indeed perpetually the theme of ecclesiastical denunciations, though one singular exception seems to have been made; for it has been observed that in the Middle Ages the personal beauty of the bishops was continually noticed upon their tombs. Women were forbidden by a Provincial Council (a Council of Auxere, A.D. 578) in the sixth century, on account of their impurity, to receive the Eucharist into their naked hands. Their essentially subordinate position was continually maintained", (Lecky, *op. cit.,* pp. 357-358).

At the Council of Macon, towards the end of the sixth century, a bishop vehemently denied that woman even belonged to the human species! (Westermarck, *op. cit.,* p. 663).

Poor woman! Had Jesus Christ lived to hear these ignoble sentiments, he would have been horrified and shocked. The life of Christ abundantly proves that he had all the manly qualities of modesty and chivalry which have been the birth-right of all the Prophets. I consider him to be of the same type and class as the Prophet Muhammad. The religion which claims to-day to be "Christianity" is certainly not the religion taught by the Nazarene. Jesus had the profoundest respect and love for his mother, the Virgin Mary. Naturally, he respected all women,

which can best be illustrated by the protection which he gave to the woman taken in sin who was being persecuted by the Jews, (Matt. 7:1-5). Christ, a model man, never degraded woman. To say that he did is a blasphemy and a lie. But there is certainly a great deal of truth in the statement that his disciples and those that came after him claiming to be savants and saints of the Church *did* degrade woman, and denied to her rightful place in the social scheme. Throughout the ages, until very recent times, the Church has heaped insult and suffering on the head of poor woman. Her emancipation in the West has been achieved, as stated above, by courageous social reformers who had to destroy the Biblical myth of the inferiority of woman to man. How far Muhammad was in advance of these reformers will be clear when we come to the status of woman in Islam.

Legal Status of Women under Christianity

So much for the moral and spiritual position of woman under Christianity. What about her *legal status*, her capacity to hold separate property, independently of her husband? I shall quote two authors to show that wherever the Canon Law was followed the identity of the wife was merged in that of the husband and the woman ceased to be a *feme sole* in the eye of the law.

Taking Maine first, we observe:

"But the Chapter of law relating to *married women* was for the most part read by the light, not of Roman but of Canon Law, which in no one particular departs so widely from the spirit of the secular as in the view it takes of the relations created by marriage. This was in part inevitable, since no society which preserves any tincture of Christian institutions is likely to restore to married women the personal liberty conferred on them by the Middle Roman Law, but the *proprietary disabilities of married females* stand on quite a different basis from their personal incapacities, and it is by the tendency of their doctrines to keep alive and consolidate the former that the expositors of the Canon Law have deeply injured civilization. There are many vestiges of a struggle between the secular and ecclesiastical principles, but the Canon Law nearly everywhere prevailed... the systems, however, which are least indulgent to married women are invariably those which have followed the Canon

Law exclusively, or those which, from the lateness of their contact with European civilization, have never had their archaisms weeded out. The Danish and Swedish laws, harsh for many centuries to all females, are still much less favourable to wives than the generality of Continental Codes (e.g. under the Code Napoleon). And yet more stringent in the proprietary incapacities it imposes is the English Common Law, which borrows for itself the greatest number of its fundamental principles from the jurisprudence of the Canonists. Indeed, the part of the Common Law which prescribes the legal situation of married women may serve to give an Englishman clear notions of the great institution which has been the principal subject of this chapter. I do not know how the operation and nature of the *Patria Potestas* can be brought so vividly before the mind as by reflecting on the prerogatives attached to the husband by the pure English Common Law and by recalling the vigorous consistency with which the view of a *complete legal subjection on the part of the wife is* carried by it, where it is untouched by equity or statutes, through every department of rights, duties, and remedies," (Maine, *Ancient Law*(10th ed.), pp. 162-164).

Lecky, in another equally lucid passage, says:

"In addition to the personal restrictions which grew necessarily out of the Catholic doctrines concerning divorce and the subordination of the weaker sex, we find numerous and stringent enactments, which rendered it impossible for women to succeed to any considerable amount of property, and which almost reduced them to the alternatives of marriage or a nunnery. *The complete inferiority of the sex was continually maintained by the law,* and that generous public opinion which in Rome had frequently revolted against the injustice done to girls, in depriving them of the greater part of the inheritance of their father, totally disappeared. Wherever the Canon Law has been the basis of legislation, we find laws of succession, sacrificing the interests of daughters and wives, and a state of public opinion which has been formed and regulated by these laws; nor was any serious attempt made to abolish them till the close of the last century", (Lecky, *History of European Morals,*vol. ii. p. 339).

In England, "up till the Ist of January, I883, it was true to state that, as a *general rule*, the contract of a married woman was *void*. Yet there were exceptions to this rule : in some cases

a married woman could make a valid contract, but could not sue or be sued upon it apart from her husband; in others she could sue but could not be sued alone; in others she could both sue and be sued alone --- *The Married Women's Property Acts of 1870 and 1874* — specified various forms of property as the separate estate of the married women, enabled them to sue for such property and gave them all remedies, civil and criminal, for its protection that an unmarried woman would have had under the circumstances. Under these Acts a married woman might make a contract for the exercise of her personal skill or labour, and maintain an action upon it", (Anson, *Law of Contract*, pp. 153, 155).

The married women's property act, 1882, repealed the Acts of 1870 and 1874, and by Subsection 1 of Section 1, it enacted that :

"All property, real and personal, in possession, reversion or remainder, vested or contingent, held by a woman before, or acquired after marriage, is now her separate property. She can acquire, hold, and dispose of it by will or otherwise, 'as her separate property in the same manner as if she were a *feme sole* without the intervention of any trustee", (Anson, *op. cit.*, P. 156).

By Subsection 2 of Section 1 of the Act it was laid down that:

"A married woman shall be capable of suing and being sued either in contract or in tort, or otherwise, in all respects as if she were a *feme sole,* and *her husband need be joined* with her as plaintiff or defendant, or be made a party to any action or legal proceeding brought by or taken against her... and any damage or costs recovered against her in any such action or proceeding shall be payable out of her separate property and not otherwise."

But it has been held that the above section does not affect the Common Law liability of a husband for his wife's *torts* during the subsistence of the marriage. It "appears to give the option of suing the wife when she has separate property and there is a chance of the plaintiff being able to enforce judgement against her; while in cases where there would be no chance of enforcing judgement against the wife, the husband is left subject to his old Common Law liabilities. The words of the section

are, *need not be joined*, but *they do not discharge the husband from his old liability*; they are intended to give a plaintiff the option of suing the husband and wife together or suing the wife alone; judgement may be entered against the wife and execution issued against her separate property, if she has any; but where she has none, the plaintiff is entitled to add the husband as co-defendant", *(Seroka v. Kattenburg* (1886), 17 Q.B.D., p. 177).

The Court of Appeal followed and approved of the decision in the above case in *Earl v. Kingscote* (1900), 2 Ch., p. 585, and *Beaumont v. Kay* (1904), 1 K. B., p. 292.

Thus it is clear that even to this day the identity of the wife is to a certain extent, still merged in that of her husband in England. But the Islamic conception of treating the wife as a *feme sole* in all respects was far in advance of any Western juristic conception, as will be clear from the ensuing chapters.

Does Christianity Forbid Polygamy ?

IT has often been asserted that Christianity interdicted polygamy, and made monogamy obligatory on all. Nothing can be farther from the truth.

Ameer Ali, speaking of the general prevalence of polygamy among all nations, remarks:

"And so it was understood by the leaders of Christendom at various times that there is no intrinsic immorality or sinfulness in plurality of wives. One of the greatest Fathers of the Christian Church (St. Augustine) has declared that polygamy is not a crime where it is a legal institution of a country, and the German reformers, even as late as the sixteenth century, allowed and declared valid the taking of a second or even a third wife, contemporaneously with the first, in default of issue, or any other cause", (Ameer Ali, *Life and Teachings of* Mohammed, p. 220, and also Ameer Ali, *Mahomedan Law*, Vol. 2. p. 23).

When Christianity made its appearance in Rome, history shows that polygamy was recognized and the early Christian Emperors seem to have admitted its validity. Says Ameer Ali:

"The Emperor Valentinian II, by an Edict, allowed all the subjects of the Empire, if they pleased, to marry several wives, nor does it appear from the ecclesiastical history of those times that the Bishops and the heads of the Christian Churches made

any objection to this law. Far from it; all the succeeding Emperors practiced polygamy, and the people generally were not remiss in following their example. Even the clergy often had several wives. This state of the laws continued until the time of Justinian, when the concentrated wisdom and experience of thirteen centuries of progress and development in the arts of life (combined with the Semitic influences not only of the two religions, but also of those great jurists who pre-eminently belonged to that race) resulted in their embodiment in the celebrated laws of Justinian. *But these laws owed little to Christianity, at least directly*. The greatest adviser of Justinian was an atheist and a pagan. Even the prohibition of polygamy by Justinian failed to check the tendency of the age. The law represented the advancement of thought; its influence was confined to a few thinkers, but to the mass it was practically a dead letter", (Ameer Ali, *Life and Teachings of Mohammed,* pp. 222-223).

John Milton, the great English poet, discussing the merits and demerits of polygamy, observes:

"In the definition which I have given (i.e. of marriage) I have not said, in compliance with the common opinion, *of one man with one woman*, lest I should by implication charge the holy patriarchs and pillars of our faith, Abraham, and the others who had more than one wife at the same time, with habitual fornication and adultery, lest I should be forced to exclude from the sanctuary of God as spurious the holy off-spring which sprang from them; yea, the whole of the sons of Israel, for whom the sanctuary itself was made. For it is said (Deut. 23: 2): 'A bastard shall not enter into the congregation of Jehovah, even to his tenth generation.' Either, therefore, polygamy is a true marriage or all children born in that state are spurious; which would include the whole race of Jacob, the twelve holy tribes chosen by God. But as such an assertion would be absurd in the extreme, not to say impious, and as it is the height of injustice, as well as an example of most dangerous tendency in religion, *to account as sin what is not such in reality*, it appears true that, so far from the question respecting the lawfulness of polygamy being trivial, it is of the highest importance that it should be decided", (Milton, *A Treatise on Christian Doctrine* pp. 231-2)

A study of certain texts in the Bible clearly admits the *lawfulness* of polygamy. For instance:

(a) "If he take him *another wife*, her food, her raiment, and her duty of marriage shall he not diminish", (Exod. 21:10).

(b) "And I gave thee (David) thy master's house, and thy master's *wives* into thy bosom, and gave thee the house of Israel and of Judah; and if that had been too little, I would moreover have given unto thee such and such things", (2 Sam. 12:8).

Milton argues that the wives of Saul, given to David by the above text, were the *virgins* in the house of Saul, and therefore David did not commit incest, since Saul was his father-in-law, (Milton, *op. cit.*, pp. 238-239).

(c) "King's daughters were among thy honourable women: upon thy right hand did stand the queen in gold of Ophir", (Psa. 45:9).

(d) "And Joash did that *which was right* in the sight of the Lord all the days of Jehoiada the priest", (2 Chron. 24:2).

(e) "And Jehoiada *took for him two wives*, and he begat sons and daughters", (2 Chron. 24:3)

From a consideration of the above texts and others from the Bible, Milton argues :

"On what grounds, however, can a practice be considered dishonourable or shameful which is prohibited to no one even under the Gospel? for that dispensation annuls none of the merely civil regulations which existed previous to its introduction. It is only enjoined that elders and deacons should be chosen from such as were husbands of one wife, (1 Tim. 3:2, and Titus 1:6). This implies, not that to be the husband of more than one wife would be a sin, for in that case the restriction would have been equally imposed on all, but that in proportion as they were less entangled in domestic affairs they would be more at leisure for the business of the Church. Since, therefore, polygamy is interdicted in this passage to ministers of the Church alone, and that not on account of any sinfulness in the practice, and since none of the other members are precluded from it either here or elsewhere, it *follows that it was permitted*, as above said, to all the remaining members of the Church, and

that it was adopted by many without offence", (Milton, *op. cit.*, pp. 240-41)

Divorce in Christianity

DID Christ allow the right of divorce? The Protestants say "Yes," but the Roman Catholics emphatically assert "No."

"According to the fundamental teachings of Jesus, as reported by Matthew (19: 9) the husband is forbidden to put away the wife, *except for unfaithfulness,* (Matt. 19:3-12). Divinely created as male and female 'they twain shall be one flesh,' and 'what therefore God hath joined together, let no man put asunder,' (Matt. 19: 6). Whether for the same reason the woman may put away the man, or whether either the innocent or guilty party may contract a second marriage, we are here not expressly informed. Inferences may, of course, be drawn by assuming that Jesus had the principles of the Jewish law in mind, but this mode of procedure is scarcely satisfying. Nor do the other sacred writers throw any clear light on these important questions. Rather do they deepen the obscurity, for both Mark (10: 2-12) and Luke (16: 18) appear absolutely to prohibit divorce, not expressly admitting even the one ground of separation granted on the authority of Matthew..... The utterances of Paul on this subject (1 Cor. 7: 8-16), as on all questions connected with marriage and the family, are of the highest importance in view of their historical consequences. Referring directly to the teachings of Jesus, he first seemingly denies the right of divorce to either party. With Mark and Luke he omits the exception mentioned by Matthew; and with Mark he expressly forbids the wife to 'depart from her husband,' adding, however the inconsequent and bewildering command, 'if she depart, let her remain unmarried, or be reconciled to her husband'", (Howard, *History of Matrimonial Institutions,* Vol.ii. pp. 19-21).

Thus we see that among Christ's own disciples there is no unanimity as to whether the Master sanctioned divorce and remarriage or not. The confusion which these contradictory passages gave rise to was settled only after many centuries of struggle which divided the whole Christendom into two camps, one for divorce and the other against it altogether.

Milton called divorce "A law of moral equity, a pure moral economical law so clear in nature and reason that it was left to

a man's own arbitrament to be determined between God and his own conscience, and the *restraint* whereof, who is not too thick-sighted, may see how hurtful and destructive it is to the house, the Church and the Commonwealth", (Milton, *Doctrine and Discipline of Divorce, Prose Works,* III, pp. 241-242).

We are entirely in agreement with Milton's views. Can anyone deny that a refusal to grant divorce must necessarily inflict great hardship on both husband and wife? It is productive of much social harm, as it puts a premium on bastardy. The Protestant Churches allow the right of divorce, but here again we find that the reforms were the result, not of the Church, but of the State—of a few social reformers. The Roman Catholic Church, on the other hand, absolutely forbids divorce, asserting that it is against the teachings of Christ! All that it allows, in cases of disagreement between husband and wife, is *judicial separation*, and not divorce. But mere judicial separation, naturally, does not enable either party to remarry and set up a new home. They are condemned to live a life of perpetual misery, and if young, to have recourse to immorality, which, as Milton observes, is hurtful to the home, the Church and the State. We are, therefore, thankful to the Arabian Prophet that he enables us to have recourse to divorce when the husband and wife cannot live peacefully together. There is no controversy in Islam as to the lawfulness or otherwise of divorce. In a few short verses the Qur'an lays down the law, and admittedly, as we shall see, they are fair and just.

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CHAPTER VIII

WOMEN IN PRE-ISLAMIC ARABIA

"Among Mohammad's own people, the Arabs, unlimited polygamy prevailed, prior to the promulgation of Islam. A man might marry as many wives as he could maintain, and repudiate them at will. A widow was considered as a sort of integral part of heritage of her husband. Hence the frequent unions between step-sons and mothers-in-law which, when subsequently forbidden by Islam, were branded by the name of *Nikah-ul-Makht* (shameful or odious marriages). Even polyandry was practised by the half-Jewish, half-Sabean tribes of Yemen", (Ameer Ali, *Life and Teachings of Mohammed,* p. 225; and also Ameer Ali, *Mohammedan Law,* vol. ii. p. 20).

"Before Islam, a woman was not a free agent in contracting marriage. It was the right of the father, brother, cousin, or any other male guardian, to give her in marriage, whether she was old or young, widow or virgin, to whomsoever he chose. Her consent was of no moment. There was even a practice prevalent of marrying women by force. This often happened on the death of a man leaving widows. His son or other heir would immediately cast a sheet of cloth on each of the widows (excepting his natural mother), and this was a symbol that he had annexed them to himself. If a widow escaped to her relations before the sheet was thrown over her, the heirs of the deceased would refuse to pay the dower. This custom is described as the inheriting of a deceased man's widows by his heirs, who in such cases would divide them among themselves like goods..,. There was no restriction as to the number of wives an Arab could take. The only limit was that imposed by his means, opportunity and inclinations. Unrestricted polygamy which was sanctioned by usage was universally prevalent. This was exclusive of the number of slave-girls which a man might possess... The limits of relationship within which marriage was prohibited were nar-

row and defined only by close degrees of consanguinity...There can be no doubt that an Arab could not marry his mother, grandmother, sister, daughter or grand-daughter, and perhaps he was not allowed to marry his aunt or niece. But *those among them that followed the Magian religion could marry their own daughters and sisters.* An Arab was permitted to take as his wife his step-mother, cousin, wife's sisters, and could combine in marriage two sisters or a woman and her niece. It is doubtful whether he could marry his mother-in-law or step daughter...Unrestrained as an Arab was in the number of his wives, he was likewise absolutely free to release himself from the marital tie. His power in this connection was absolute and he was not required or expected to assign any reason for its exercise, nor was he under the necessity of observing any particular procedure. The word commonly used for this purpose was *talaq*. It depended upon his discretion whether he would dissolve the marriage absolutely and thus set the woman free to marry again or not. He might, if he so chose, revoke the divorce and resume marital connection. Sometimes an Arab would pronounce *talaq* ten times and take his wife back, and again divorce her and then take her back, and so on. The wife in such a predicament wa entirely at the mercy of the husband, and would not know when she was free. Sometimes the husband would renounce his wife by means of what was called a suspensory divorce. This procedure did not dissolve the marriage, but it only enabled the husband to refuse to live with his wife, while the latter was not at liberty to marry again...The wife among the Arabs has no corresponding right to release herself from the marriage bond. But her parents by a friendly arrangement with the husband could obtain a separation by returning the dower if it had been paid, or by agreeing to forgo it if not paid. Such an arrangement was called *Khula*, and by it the marriage tie would be absolutely dissolved", (Abdur Rahim, *Muhammadan Jurisprudence,* pp. 9-11).

So much for marriage and divorce among the Arabs before Islam. But they even practiced *female infanticide*, as is clear from the following:

"In proportion to his eagerness to have a son, an Arab father regarded the birth of a daughter as a calamity, partly because of the degraded status of women. Even in the time of the

Prophet female infanticide was prevalent, and many fathers used *to bury their daughters alive* as soon as born", (Abdur Rahim, *op. cit.*, p. 12; and Ameer Ali, *Mohammadan law*, vol. ii. pp. 19-21)

As regards the right of the Arab woman to hold property, we find "that though a woman was debarred from inheriting, she was under no disability in the matter of owning property. Anything that she might receive from her husband as dower or by gift from him or her parents and relatives was absolutely hers. Sometimes women acquired riches by trade and commerce, and some of them were owners of lands and houses. *But neither the person nor possessions of a woman were safe unless she was under the protection of her parents or some male relatives or her husband.* If her protector proved rapacious or dishonest, she hardly had any remedy", (Abdur Rahim, *op. cit.*, p. 12).

Regarding Succession and Inheritance, the customary laws of the heathen Arab were as follows:

"On the death of an Arab his possessions, such as had not been disposed of, devolved on his *male heirs* capable of bearing arms, *all females and minors being excluded.* The heirship was determined by consanguinity, adoption or compact...The shares of the different heirs in the heritable estate were not fixed—— *If there were grown-up sons they probably excluded daughters; wives, sisters and mother did not inherit at all,* but the estate was considered liable for the payment of the widow's dower, and among some tribes at least for her maintenance", (Abdur Rahim, *op. cit.*, pp. 15-16).

The above brief account, as we have seen bears a strong resemblance to pagan and Hindu laws. Woman was not treated as a useful and respectable member of society, but rather as mere chattel and goods. This was so in all primitive societies.

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CHAPTER IX
WOMEN UNDER ISLAM

Fall of Adam in the Qur'an

So much for the position of woman in Arabia before Islam. Now let me give you the position of woman under Islam as given in the Qur'an.

We shall begin with the Quranic version "of the fall of man":

(a) "And We said: O Adam! dwell you and your wife in the garden, and eat from it a plenteous (food) wherever you wish, and do not approach this tree, for then you will be of the unjust", (2:35).

(b) "But the devil *made them both fall from it,* and caused *them* to depart from that (state) in which they were; and We said: Get forth, some of you being the enemies of others, and there is for you in the earth an abode and provision for a time", (2:36)

And Again:

(c) "But the devil made an evil suggestion to *them* that he might make manifest to *them* what had been hidden from *them* of their evil inclinations, and he said: Your Lord has not forbidden you this tree except that you may *both* become two angels or that you may (*not*) become of the immortals", (7:20).

(d) "Then he caused *them* to fall by deceit; so when they tasted of the tree, their evil inclinations became manifest to them, and they both began to cover themselves with the leaves of the garden, and their Lord called out to them: Did I not forbid you *both* from that tree and say to you that the devil is your open enemy!", (7:22).

The above texts destroy once for all the story that it was Eve, and Eve alone, who was responsible for the banishment of Adam and Eve from the Garden of Eden. In this allegorical picture both man and woman are *equally* culpable. Both had

committed sin. Both crave the forgiveness of the Almighty, as is shown from the following verse:

(e) "*They* Said: Our Lord! *we* have been unjust to *ourselves,* and if Thou forgive *us* not, and have (not) mercy on us we shall certainly be of the losers", (7:23).

In one stroke Islam has banished the stigma from woman that she is man's eternal seducer and tempter and that but for her man would be pure and sinless. In this respect alone, I submit, Islam stands far and above the conception of woman according to Paganism, Hinduism, Buddhism, Judaism and Christianity. Woman is not solely responsible for the sins of mankind, as we have seen above, but that both man and woman are liable to err and make mistakes.

Duties of Guardians

THE duties of guardians towards orphans are made clear from the following verses:

(a) "And give the orphans their property, and do not substitute worthless (things) for (their) good (ones), and do not devour their property (as an addition to your own property); this is surely a great crime", (4:2).

(b) "And do not give away your property which Allah has made for you (a means) of support to the weak of understanding, and maintain them out of (the profits of) it, and clothe them and speak to them words of honest advice", (4:5).

But "your property" in the above verse is meant the property of the orphans which is under the guardians' control. The above verse lays down the principle of the Court of Wards. It requires guardianship in the case of all who are of weak understanding, whether minors or others.

(c) "And test the orphans until they attain puberty; then if you find in them maturity of intellect, make over to them their property, and do not consume it hastily and extravagantly, lest they attain to full age; and whoever is rich, let him abstain altogether and whoever is poor, let him eat reasonably; then when you make over to them their property, call witnesses in their presence; and Allah is enough as a Reckoner", (4:6).

The above verse enjoins on the guardians the duty of preserving the property of minors, and not to waste it, so that

when they attain puberty the *corpus* of the property may be given over to them intact. When the guardian is well-to-do, he is asked not to take any remuneration for his services in looking after his ward's property. On the other hand, when he is poor the law allows him reasonable wages which must be commensurate with the value of the property and also with the nature of its management. The calling of witnesses when the guardian hands over the property to the ward is necessary to avoid disputes and litigation. But if the trustee has been clever enough to conceal his breaches of trust, then he is warned that "Allah is enough as a Reckoner"; that is to say, He knows, and as such he would be punished.

(d) "And when there are present at the division the relatives and the *orphans* and the needy, give them (something) out of it, and speak to them kind words", (4:8).

(e) "(As for) those who swallow the property of the *orphans* unjustly, surely they only swallow fire into their bellies, and they shall enter burning fire", (4:10).

The above verses indicate the enormity of the offence of breaches of trust on the part of guardians. The Qura'n enjoins scrupulous honesty on all, more so on guardians. These and similar verses were necessary to protect the poor orphans, who were mostly women, from the tyranny of brutal and selfish relatives and guardians in the days of ignorance.

Treatment of Women

TURNING our attention to the treatment of women, the Qur'an says:

(a) "And as for those who are guilty of an indecency from among your women, call to witness against them four (witnesses) from among you; then if they bear witness, confine them to the houses until death takes them away or Allah opens some way for them", (4:15).

Maulvi Muhammad Ali, Commenting on the above verse, says:

"*Al-fahishah* signifies anything *exceeding the bounds of rectitude* (gross, immodest, lewd, obscene); and *fahishah*, or *exceeding the bounds of rectitude,* in women may mean their going out without permission or their using foul language. Though the

word is no doubt used sometimes as meaning *fornication,* the context shows that here it is used to signify any immoral conduct *short of fornication,* for the punishment of fornication is given elsewhere (24: 2-3), and the words of the verse that follows, referring as they do to the same immoral act as is mentioned here, with the indefinite nature of punishment, which in the case of an act short of fornication could not be made definite and to be varied with the nature of the crime, strengthens this position. The punishment in the case of women is the curtailing of their liberty, so that they should be free to go out of their houses. If they then mend their ways, a way is opened for them by Allah and they regain their liberty; if they do not, the curtailment should be extended till they die. There is no proof for Palmer's assertion that "women taken in adultery or fornication were, at the beginning of Islam, literally immured", (Muhammad Ali, *Holy Qur'an,* Footnote 551).

(b) "And as for the two who are guilty of *indecency* from among you, give them both a *slight punishment;* then if they repent and amend, turn aside from them surely Allah is oft returning (to mercy), the Merciful", (4:16).

Here the verse clearly means both the man and woman, and thus the nature of the punishment is again left indefinite to vary with the nature of the offence committed.

(c) "O you who believe! it is not lawful for you that you should *take women as heritage* against (their) will; and do not straiten them in order that you may take part of what you have given them, unless they are guilty of manifest indecency; *and treat them kindly;* then if you hate them, it may be that you dislike a thing while Allah has placed abundant good in it", (4:19).

(d) "And marry not women whom your fathers married except what has already passed; this surely is indecent and hateful, and it is an evil way", (4:22).

If we analyse the above two verses, we get the following rules:

(1) They deny the right of the heir to inherit the deceased man's widows, which, as we have noticed, existed among the pre-Islamic Arabs.

(2) They deny the right of the heir to deprive the widows of their dowry unless they were guilty of hatred and desertion of

the husband, or of doing harm to the husband and his family. In such cases, the fault being on the part of the woman, she may be required to return her dowry wholly or in part, (Muhammad Ali, *op. cit.,* footnote 556).

(3) The heirs of the deceased are commanded to treat the widows with kindness, and not to despise them.

(e) "And if you wish to have (one) wife in the place of *another* and you have given one of them a heap of gold, then take not from it anything; would you take it by slandering (her) and (doing her) manifest wrong?", (4:20).

(f) "And how can you take it when one of you has already gone in to the other and they have made with you a firm covenant?", (4:21).

Both the above verses remedy another evil which was common in the days of ignorance. It was notorious that if a married man desired to marry another woman, he would accuse his first wife of gross immorality, thus compelling her to obtain a divorce by paying a large sum of money. This would be a breach of the marriage covenant, and the Qur'an rightly forbade it.

It is also noteworthy that the Qur'an lays great stress on the fair name and reputation of women. For instance, it says:

(g) "And *those who accuse free women*, then do not bring four witnesses, flog them (giving) eighty stripes, and do not admit any evidence from them ever; and these it is that are the transgressors", (24:4).

Here the accusation is against *unmarried* women, and the punishment for it is prescribed, which is severe. The following two verses deal with the accusation of the wife by the husband and *vice versa:*

(h) "And (as for) *those who accuse their wives* and have no witnesses except themselves, the evidence of one of these (should be taken) four times, bearing Allah to witness that he is most surely of the truthful ones", (24:6).

(i) "And the fifth (time) that the curse of Allah be on him if he is one of the liars", (24:7).

(j) "And it shall avert the chastisement from her if she testify four times, bearing Allah to witness that he is most surely one of the liars", (24:8).

(k) "And the fifth (time) that the wrath of Allah be on her if he is one of the truthful", (24:9).

Verses *(h)* to *(k)* relate to cases when either the husband or the wife accuses the other of infidelity but cannot produce witnesses in proof of his or her allegation. In such cases, a divorce is effected, as neither party is punishable for the accusation which is based simply on oath against oath. In this connection it must be noted that if the husband accuses his wife of infidelity the wife may claim divorce *by a suit,* but *laan,* or the mere imprecation or accusation does not *ipso facto* operate as a divorce, (Mulla, *Mahomedan Law* (8th ed.), p. 194).

(l) "Men are *maintainers (Qawwamun)* of women, because Allah has made some of them to excel others and because they spend out of their property; the good women are therefore obedient, guarding the unseen as Allah has guarded; and (as to) those on whose part you fear desertion, admonish them, and leave them alone in the sleeping-places and beat them; then if they obey you, do not seek a way against them; surely Allah is High, Great", (4:34).

This verse is often quoted to prove that the Prophet treated women unfairly by giving men superior powers and rights. Let me give you its commentary by Muhammad Ali:

"The significance of *qawwam* means *he maintained* her and managed her affair, having charge of her affair; hence he is said to be her *qawwam.* i.e. *maintainer.* Similarly, it means *he maintained the orphan or the child.* Hence by the men being *qawwamun* is only meant that they are the maintainers of women, and the reason given is that Allah has made some to excel others, i.e. the man excels the woman in constitution and physique, while the woman excels the man in beauty and delicacy of structure....Obedience here signifies obedience to Allah. This significance of the verse is made clear by a comparison with 33:31, 35; and 66:5. The guarding of the unseen is a euphemism *for guarding the husband's rights.* The two justifications of a good wife, as given here, are her piety or obedience to Allah and chastity, i.e. she must be careful of her duty to Allah and to her husband --- The remedy pointed out when the wife's desertion is feared is threefold. At first she is only to be admonished. If she desists, the evil is mended, but if

she persists in the wrong course her bed is to be separated. If she still persists, chastisement is permitted *as a last resort.* Regarding this last remedy two things must, however, be borne in mind. Firstly, it is a mere permission and sayings of the Holy Prophet make it clear that, though allowed, it was discouraged in practice. Thus the Prophet is reported (by Imam Fakhruddin Razi) to have said, on the complaint of certain women as to the ill-treatment by their husbands; *You will not find these men as the best among you'.* (Abu Dawood 12:42). According to Sha'fi'i, it is preferable not to resort to the chastisement of the wife. In fact, as the injunctions of the Qur'an are wide in their scope, the example of the Holy Prophet and his constant exhortations for kind treatment towards women, so much so that he made a man's good treatment of his wife the gauge of his goodness in general—*'the best of you is he who is best to his wife'*—show clearly that this permission is meant only for that type of men and women who belong to a low grade of society. Secondly, even this permission cannot be adopted indiscriminately, for sayings of the Holy Prophet make it quite evident that chastisement, when resorted to in extreme cases, must be very slight. Abdullah bin Abbas says that it may be with a tooth-brush (called *khilal*) or something like it", (Muhammad Ali, *op. cit.,* Footnotes 568, 569, 570, 572).

In this connection I may point out the view of English Common Law on the right of the husband to chastise his wife. Blackstone, writing in the eighteenth century,says:

"The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to intrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his apprentices or children; for whom the master or parent is also liable in some cases to answer. But this power of correction was confined within reasonable bounds, and the husband was prohibited from using any violence to his wife --- The *Civil Law* gave the husband the same, or a *larger*, authority over his wife; allowing him for some misdemeanours *flagellis et fustibus acriter verberare uxorem* (i.e. *a husband may beat his wife with whips or cudgels sharply).* But with us, in the politer reign of Charles the Second, this power of correction began to be doubted, and a wife

may now have security of the peace against her husband; or, in return, a husband against his wife. Yet the lower rank of people, who were always fond of the old Common Law, still claim, and exert, their ancient privilege; *and the courts of law will still permit a husband to restrain a wife of her liberty*, in case of any gross misbehaviour", (Blackstone) *Commentaries on the Laws of England*, vol. i. p.444).

Clearly, then, this permissive use of chastisement in the time of Muhammad among a savage and barbarous people was considered necessary. To-day, just as in England this right has become a "mere legal curiosity", so in almost all Islamic countries the power of chastisement has fallen into decay and never exercised as of right.

MARRIAGE IN ISLAM

CONCERNING the question of marriage, the Qur'an says:

(a) "Forbidden to you are your mothers and your daughters and your sisters and your paternal and maternal aunts and brothers' daughters and your sisters' daughters and mothers that have suckled you and your foster-sisters and mothers of your wives and your step-daughters who are in your guardianship, (born) of your wives to whom you have gone in; but if you have not gone in to them, there is no blame on you (in marrying them), and the wives of your sons who are of your own loins, and that you should have two sisters together, except what has already passed; surely Allah is forgiving, Merciful:" (4:23)

When dealing with the conditions prevailing in Arabia before Islam, we observed that the limits of relationship within which marriage was prohibited were narrow and defined only by the closest degree of consanguinity. Those among them that followed the Magian religion married even their own daughters and sisters. All this the Qur'an forbids, and defines the limits of marriage quite clearly.

(b) "And all *married* women except those whom your right hands possess: this is Allah's ordinance to you, and *lawful* for you are (all women) besides those, provided that you seek (them) with your property, taking (them) in marriage not committing fornication. Then as to those whom you profit by (by marrying) give them their dowries as appointed; and there is no

blame on you about what you mutually agree after what is appointed (of dowry); surely Allah is Knowing, Wise", (4:24).

The above verse prohibits marriage with women who are already married to *Muslims*. By the phrase "except those whom your right hands possess" is meant female captives of war. The Qur'an legalizes marriage with such women even though they may be married at the time of their capture, *provided they become Muslims,* since Islam forbids marriage with an idolatress, by the verse (2:221) which opens --- *"And do not marry the idolatresses until they believe ---"*

(c) "And whoever among you has not within his power ampleness of means to marry free believing women, then (he may marry) of those whom your right hands possess from among your believing maidens; and Allah knows best your faith. You are (sprung) one from the other; so *marry them* with the permission of their masters, *and give them their dowries* justly, they being chaste, *not fornicating, nor receiving paramours;* and when they are taken in marriage, then if they are guilty of indecency they shall suffer half the punishment which is inflicted upon free women. This is for him among you who fears falling into evil; and that you abstain is better for you and Allah is Forgiving, Merciful", (4:25).

The above verse may be analysed, and means as follows:

(1) Maiden captives of war may be married if they become Muslims, when the man is poor and cannot afford to marry a free-born woman.

(2) If such maidens belong to others, then the permission of their masters is necessary.

(3) *Marriage* with such maidens is made obligatory and also the giving of dowries.

(4) The taking of such maidens as *concubines* or *mistresses* is forbidden by this verse.

This verse clearly destroys the common charge hurled at Islam, that it sanctions concubinage. Nothing can be clearer than the words "not fornicating, nor receiving paramours". Again the following verses may be cited to show that Islam forbids concubinage in the clearest terms:

(a) "And *marry* those among you who are single *and those who are fit among your male slaves and female slaves;* if they are needy, Allah will make them free from want out of His Grace; and Allah is Amply-giving, Knowing", (24:32)

(b) "And let those who do not find *a match keep chaste* until Allah makes them free from want out of His Grace ---- *and do not compel your slave-girls to prostitution, when they desire to keep chaste in order to seek the frail good of this world's life", (24:33).*

Reverting to verse 4:25, given above, we may note the remaining characteristic:

(5) If such maidens when married be guilty of an indecency then only half the punishment that is normally inflicted on free women may be inflicted upon them, the reason being that their captivity is enough punishment for them, and the full penalty of the law need not be enforced.

CONSENT TO MARRIAGE NECESSARY

(a) "UNDER the Muhammadan law, according to all the schools, the power of the father to give his children in marriage without their consent can be exercised in the case of sons until they have attained their *bulughiyet or puberty, when they are emancipated, so far as their personal rights are concerned, from the patria potestas*, and are at liberty to contract themselves in marriage. *Persons not sui juris* labour under the same legal disabilities as in other systems of law. They cannot enter into any contract or legal transactions without the consent of their natural guardians---- Puberty is presumed on the completion of the fifteenth year, according to most of the schools, unless there is evidence to the contrary. As a general rule, however, a person who completes the fifteenth year is considered, *without distinction of sex,* to be *adult* and *sui juris*, possessed of the capacity to enter into legal transactions", (Ameer Ali, *Mahomedan Law, vol. ii. pp. 278-279).*

Ameer Ali, quoting the *Hedaya*, says:

(b) "It is not lawful for a guardian to force an adult virgin into marriage. None, *not even a father, nor the sovereign, can lawfully contract a woman in marriage who is adult and of sound mind, without her permission, whether she be a virgin or not", (Ameer Ali, op.cit., p.279).*

(c) "Though the right of *Jabr* (i.e., *the right of marrying minors without their consent)* is theoretically an absolute right, there are numerous conditions attached to its exercise. The father, without any difference among the jurists, is prohibited from marrying his child to those who are suffering from any disease, to slaves, idiots and other ineligible persons ..... In fact, the law is particularly attentive to the interests of the child.... It takes care that the right of *Jabr* should never be exercised to the prejudice of the infant; any act of the father which is likely to injure the interests of the minor is considered illegal and entitles the *Qazi* or Judge to interfere in order to prevent the completion of such act, or if complete, to annul it", (Ameer Ali, op. cit., pp. 280-81).

(d) "Even in the case of a marriage contracted by the father or grandfather as guardian, the presumption that it is for the benefit of the minor is not conclusive, and such a marriage is liable to be set aside in certain cases, where it is plainly undesirable and injurious to the minor..... The accepted view (of the jurists) seems to be that if the father was not a man of proper judgement and was of reckless character, and married his minor daughter to a man of immoral habits it is liable to be set aside.... "(Abdur Rahim, *op. cit., p. 332).*

The above right of *Jabr* is vested in the father or grandfather, and we have seen how qualified and restricted this right is. But where the minor is given in marriage by any relative *other* than the father or grandfather, the law on the subject is as follows:

(e) "Where a minor is contracted in marriage by any person other than the father or the grandfather, *such minor on attaining puberty has an absolute right to ratify or rescind the contract.* But the minor has an option even in the case of a marriage contracted by a father or grandfather, if the latter was a prodigal or addicted to evil ways or the marriage was *manifestly* to the minor's disadvantage", (Ameer Ali, op. cit., p. 290).

The above right vested in the minor is called the *Option of Puberty.*

POLYGAMY IN ISLAM

WE have seen that polygamy was prevalent among all the nations of antiquity, and is even now unrestricted among the

Hindus and the Buddhists. We have also observed the state of Arabia before the advent of Islam ---- its gross licentiousness and depravity. Let me give you the law of the Qur'an on this subject:

(a) "And if you fear that you cannot act equitably towards orphans, then marry such women as seem good to you, *two, three and four, but if you fear that you will not do justice (between them), then (marry) only one* or what your right hands possess; *this is more proper; that you may not deviate from the right course". (4:3).*

This is one of the most important verses of the Qur'an. I give below the views of several eminent authorities on this subject. To begin with Muhammad Ali:

(1) "This passage *permits polygamy under certain circumstances; it does not enjoin it, nor even permit it unconditionally. ---- It is admitted that this chapter (entitled An-nisa, or Women)* was revealed to guide the Muslims under the conditions which followed the battle of Uhud, and the last portion of the last chapter deals with the battle. Now in that battle seventy men out of seven hundred Muslims had been slain, and this decimation had largely decreased the number of males who, being the bread-winners, were the natural guardians and supporters of the females. The number was likely to suffer a still greater diminution in the battles which had yet to be fought, while the number of women would be increased by the addition of prisoners of war. Thus many orphans would be left in the charge of widows, who would find it difficult to procure the necessary means of support. Hence in the first verse of this chapter the Muslims are enjoined to respect the ties of relationship, inasmuch as they are told that they are all in fact related to each other. In the second verse, the care of orphans is particularly enjoined. In the third verse (quoted above) we are told that if they could not do justice to the orphans they might marry the widows, whose children would thus become their own children, and as the number of women was now much greater than the number of men, they were permitted to marry even two or three or four women. It would thus be clear that the permission to have more than one wife was given under the peculiar circumstances of the

Muslim Society then existing, and the Prophet's action in marrying widows, as well as the example of many of his companions, corroborates this statement. Marriage with orphan girls is also sanctioned in this passage, for there were the same difficulties in the case of orphan girls as in the case of widows, and the words are general. It may be added here that polygamy in Islam is both in theory and in practice *an exception,* not a rule, and as an exception it is a remedy for many of the evils especially prevalent in European society. It is not only the preponderance of females over males that necessitates polygamy in certain cases, but there is a variety of other circumstances which require polygamy to be adopted under exceptional circumstances, not only for the moral but also for the physical welfare of society. Prostitution, the great evil of civilization, which is a real canker, with its concomitant increase of bastardy, is practically unknown to countries where polygamy is allowed as a remedial measure ..... By *What your right hands* possess are meant the females who were taken prisoners in war, and such marriages are legalized", as we have noticed above, (Muhammad Ali, op. cit., Footnote 535, 536).

Taking the above verse in conjunction with the following :

(b) *"And you have it not in your power to do justice between your wives, even though you may covet (it),* but be not disinclined (from one) with total disinclination, so that you leave her as it were in suspense; and if you effect a reconciliation and guard (against evil), then surely Allah is Forgiving, Merciful" (4:129)

The resulting view of the Qur'an on polygamy is as follows:

(i) That marriage with more than one woman is merely *permissive.* (It was sanctioned after the battle of Uhud).

(ii) That the number of wives a man can have at the same time is limited to four *(Islam thus restricting polygamy).*

(iii) That where the husband fears that he cannot do justice to more than one wife, *he must not marry more than one woman at the same time* (all the above in verse 4:3).

(iv) That *it is beyond human power to do justice between all the wives,* although man may covet the desire to do so (clear from verse 4:129).

(v) That is inspite of this human failing, one ought to do one's best in treating them impartially.

(vi) That it is "more proper that a man have one wife, so that he may not deviate from the right course" (4:3), the course of impartiality and equity. Thus we see that Islam *indirectly,* but in unequivocal language, *deprecates polygamy;* and finally –

(vii) That it is an *abnormal* law, for abnormal states of society, and though the permission is there, it is not generally availed of, as is clear from Howard, cited below:

(2) "Where polygamy exists it is sometimes the chiefs alone who are permitted to have a plurality of wives. Besides, just as in the case of polyandry, almost everywhere it is confined to a very small part of the people, the majority being monogamous. It is so 'among all Mohammedan people, in Asia and Europe, as well as in Africa.' 'Ninety-five per cent of the Mohammedans of India, for instance, are said to be monogamists', and in Persia, it is reported, only 'two per cent of the population enjoy the questionable luxury of a plurality of wives'", (Howard, *History of Matrimonial Institutions,* vol. i. p. 142; and Ameer Ali, *Mahomedam Law,* Vol. ii. pp. 24-25).

(3) "He (Mohammed) restrained polygamy by *limiting* the maximum number of contemporaneous marriages and by *making absolute equity towards all obligatory in the man.* It is worthy of note that the clause in the Koran (4:3) which contains the permission to contract four contemporaneous marriages is immediately followed by a sentence which cuts down the significance of the preceding passage to its normal and legitimate dimensions. The former passage says: 'You may marry two, three or four wives, but no more'. The subsequent lines declare: 'But if you cannot deal equitably and justly with *all, you shall marry only one'.* The extreme importance of this provision, bearing especially in mind the meaning which is attached to the word *equity (adl)* in the Koranic teachings, has not been

lost sight of by the great thinkers of the Muslim world", (Ameer Ali, *Mahomedan Law, vol. ii. p 42).*

(4) "The Muhammadan law undoubtedly contemplates *monogamy as the ideal to be aimed at,* but concedes to a man the right to have more than one wife, not exceeding four, at one and the same time, *provided he is able to deal with them on a footing of equality and justice.* This is in accord with the scheme of Islamic legislation which sets up certain moral ideals to be gradually realized by the community, positively forbidding only such acts as must clearly be injurious to social and individual life at all times", (Abdur Rahim, *op. cit.,* pp. 327-328).

It is suggested that the above Quranic texts, supplemented by the views of certain well-known authorities, clearly destroy the charge that is so often made by the ignorant that Islam enjoins polygamy or that it sanctions unrestricted polygamy. No religion, in my submission, has achieved the betterment of society with greater success than Islam. Why? Because the laws of Islam are *practical;* they have been framed with a view to meet both the normal and abnormal needs of human society. They are applicable to all states of society, from the purely primitive to the highly civilized. Their very elasticity have been the chief cause of the success of Islam.

Islam also *forbids polyandry.* It never existed in Islamic countries; the prohibition is contained in the following verse, (note that the preceding verse, 4:23, enumerated the class of women forbidden in marriage. This verse is a continuation of such prohibition):

> "And all *married* women except those whom your right hands possess; (this is) Allah's ordinance to you"..... (4:24).

"According to the rendering adopted generally, the meaning is that even as it is unlawful for a man to marry a woman within certain degrees of relationship, it is *also unlawful for him to take in marriage one who is already married to another person.* An exception is made, however, regarding *those whom your right hands possess,* by which is meant female captives of war". The Qur'an legalizes marriage with such women, as we have noticed above, even though they may be *married to non-*

Muslims at the time of their capture, provided they become Muslims, (Muhammad Ali, *op.cit., Foot Note 560).*

DIVORCE IN ISLAM

AFTER marriage comes divorce. What is the view of the Qur'an on this burning topic?

(a) "And if you fear a breach between the two, then appoint a judge from his people and a judge from her people; if they both desire agreement, Allah will effect harmony between them; surely Allah is Knowing, Aware", (4:35).

This verse apparently refers to the case where the husband has not finally separated from his wife, or *vice versa.* In such a case, the *Qazi* is to appoint arbitrators on both sides to effect a reconciliation. Should the desire for reconciliation be genuine, then Allah would hasten the reunion. On the other hand, if the differences are irreconcilable, then a divorce may be pronounced by the *Qazi* against the party at fault.

It is clear from this verse that the Qur'an considers it more salutary for the husband or the wife to go before the *Qazi* and appeal for arbitration to smooth their difficulties than do any rash act which may cause much unhappiness to both afterwards.

(b) "Those who swear that they will not go into their wives, should wait four months; so if they go back, then Allah is surely Forgiving, Merciful", (2:226).

By "going back" is meant the re-establishment of conjugal relations. If before, the expiry of the period mentioned, the husband and wife resume marital relations, then Allah is willing to forgive the faults of either or both.

(c) "And if they have resolved on a divorce (*Talaq),* then Allah is surely Hearing, Knowing", (2 :227).

Muhammad Ali, commenting on the above verse, says:

"Talaq is an infinitive noun from *talaqat,* said of a woman, meaning *she was left free to go her way, or become separated from her husband, and signifies the dissolving of the marriage tie.....* Divorce is one of the institutions of Islam regarding which much misconception prevails, so much so that even the Islamic law, as administered in the British Courts in India, is not free from these misconceptions. The chief features of the

Islamic law of divorce, as dealt with in the Holy Qur'an, will be noticed under the particular verses dealing with them. Here I may state that the Islamic law has many points of advantages as compared with both the Jewish and Christian laws as formulated in *Deuteronomy and Matthew*. The chief feature of improvement is that the wife can claim a divorce according to the Islamic law, neither Moses nor Christ conferring that right on the woman, though it is to be regretted that this very feature is the one that is not recognized in India. And the feature of divorce is that it is elastic and does not strictly limit the cause of divorce. In fact, if the civilized nations of Europe and America, who own the same religion, are at the same stage of advancement, and have an affinity of feeling on most social and moral questions, cannot agree as to the causes of divorce, how could a universal religion like Islam, which was meant for all ages and all countries for people in the lowest grade of civilization as well as those at the top, limit those causes, which must vary with the varying conditions of humanity and society.... It may also be added here that, though divorce is allowed by Islam if sufficient cause exists, yet the right is to be exercised under exceptional circumstances. The Qur'an itself approves of the Holy Prophet insisting on Zaid not divorcing his wife, notwithstanding a discussion of a sufficiently long standing (33:37). And the Holy Prophet's memorable words *'of all the things which have been permitted to men divorce is the most hated by Allah'* (Abu Dawud 13:3), will always act as a strong check on any loose interpretation of the words of the Holy Qur'an. There are cases on record (given by Bukhari) in which he actually pronounced divorce to be illegal", (Muhammad Ali, *op. cit., footnote* 293).

(d) "And the divorced women should keep themselves in waiting for three courses; and it is not lawful for them that they should conceal what Allah has created in their wombs, if they believe in Allah and the last day; and their husbands have a better right to take them back in the meanwhile if they wish for reconciliation; and *they (women) have rights similar to those against them in a just manner,* and the men are a degree above them (meaning *physically*), and Allah is Mighty, Wise", (2:228).

"The period of waiting or *iddat*, forms the first condition in the Islamic law of divorce. But for cases in which marriage is not

consummated, no period of waiting is necessary (as is clear from (33:49). The period of waiting is really a period of temporary separation, during which conjugal relations may be re-established. This period of temporary separation serves as a check upon divorce, and it is the *second* point mentioned by the Qur'an. This is the best safeguard against the misuse of divorce, for in this way only such unions would be ended by divorce as really deserve to be ended, being devoid of the faintest spark of love. Thus, while the Islamic law of divorce makes every possible provision for love to assert itself, it requires the dissolution of the marriage when it is proved that mutual love is not possible. The rights of *women* against their husbands are stated to be *similar* to those which the husbands have against their wives.... The change in this respect was nearly a revolutionizing one, for the Arabs hitherto regarded women as mere chattels, and *now the women were given a position equal in all respects to that of men*, for they were declared to have rights similar to those which were exercised against them. This declaration brought about a revolution not only in Arabia but in the whole world, *for the equality of the rights of women with those of men was never previously recognized by any nation or any reformer*; nay, it is not to this day recognized among the most civilized nations. The woman could no longer be discarded at the will of her 'lord', but she could either claim equality as a wife or demand divorce. The statement that 'men are a degree above them' does not nullify the rights asserted in the previous passage, but refers to quite a different aspect of the question which is made clear in verse 4:34" (as explained above). (Muhammad Ali, *op. cit.*, footnote 295, 296; and also Ameer Ali, Mahomedan Law, vol, ii. pp. 529-566).

(e) "Divorce may be *(pronounced) twice; then keep (them)* in good fellowship or let *(them)* go with kindness; and it is not lawful for you to take *(away)* any part of what you have given them, unless both fear that they cannot keep within the limits of Allah; then if you fear that they cannot keep within the limits of Allah, *there is no blame on them for what she gives up to become free thereby.* These are the limits of Allah, so do not exceed them, and whoever exceeds the limits of Allah, these it is that are the unjust", (2:229).

A very important verse indeed!

"The *third* rule regarding divorce is that the *revocable* divorce of the previous verse can be pronounced only twice. In the days of ignorance, a man used to divorce his wife and take her back within the prescribed time, even though he might do this a thousand times", (as we have noticed above). "Islam reformed this practice by allowing a revocable divorce twice, so that the period of waiting in each of these two cases might serve as a period of temporary separation during which conjugal relations could be re-established. The *fourth* point is that the husband must make his choice after the second divorce either to retain her permanently or to bring about a final separation. The object of a true marriage union is indicated in the simple words *keep them in good fellowship,* and where, owing to discussions, it is impossible to remain in good fellowship, then the man must let the woman *go with kindness",* and where the marriage has been a failure, "it is both in the interests of the husband and the wife and in the interests of society itself that such a union should be brought to a termination, so that the parties may seek a fresh union. But even in taking this final step, the woman must be treated kindly..... The full payment of the dowry to the woman is the *fifth* rule relating to the Islamic law of divorce, and it serves as a very strong check upon the husband in resorting to unnecessary divorce. The dowry is usually sufficiently large to make divorce a step which can only be adopted as a last measure", (Muhammad Ali, op. cit., footnote 298, 299, 300).

The *sixth* rule with regard to divorce *is the right of the wife to claim a divorce.* This is technically called *Khula'*. "Among the religions of the world, it is one of the distinguished characteristics of Islam that it gives the wife the same right to claim a divorce as it gives the husband to pronounce one, if she is willing to forgo the whole or part of the dowry. The case of Jameelah, wife of Sabit bin Qais, is one that is reported in numerous reports of the highest authority. Here it was the wife who was dissatisfied with the marriage. There was not even a quarrel, as she plainly stated in her complaint to the Prophet: 'I do not find any fault with him on account of his morals (i.e. *his treatment),* or his religion'. She only hated him. And the Holy Prophet had her divorced on condition that she returned to her husband the garden which he had made over to her as her dowry (*Bukhari* 68:12). It is even said that the husband's love for the wife was as

intense as her hatred for him. If, then a woman could claim a divorce for no reason other than the unsuitableness of the match, she had certainly the *right* to claim one if there was ill-treatment on the part of the husband or any other satisfactory reason, and among the early Muslims it was an established right. Even now it is a right which is maintained in many Islamic countries", (Muhammad Ali, op. cit., footnote 301; Ameer Ali, *Mahomedan Law, vol. ii. pp.* 567-578).

"The words *if you fear* evidently refer to the properly constituted authorities, and this brings us to the *seventh* point with regard to the law of divorce, viz. that the authorities can interfere in the matter, and cases are actually on record in which a wrong done by an unjust divorce was mended by the authorities", (Muhammad Ali, *op. cit., footnote 301).*

The last point to note in connection with the above verse (2 : 229) is that Allah forbids anyone to go beyond the limits He has imposed, and if either does so, then he or she is unjust.

(f) "So if he divorces her she shall not be lawful to him afterwards until she marries another husband; then if he divorces her there is no blame on them both if they return to each other (by marriage) if they think they can keep within the limits of Allah, and these are the limits of Allah which He makes clear for a people who know", (2:230).

"After the irrevocable divorce is pronounced the husband cannot re-marry the divorced wife until she has been married elsewhere and divorced, and this is the *eighth* point with regard to the law of divorce. The verse abolishes the immoral custom of *halalah* a temporary marriage gone through with no other object than that of legalizing the divorced wife for the first husband, a custom prevalent in the days of ignorance, but abolished by the Holy Prophet, according to a report which speaks of his having cursed those who indulge in the evil practice. There must be a genuine marriage and a genuine divorce. *This restriction makes the third pronouncement of divorce very cautious,* and, in fact, very rare, and this acts as another check against frequent divorce. Muir's remarks as to the hardship which this rule involves not only for 'the innocent wife' but also for 'the innocent children', for 'however desirous the husband may be of undoing the wrong, the decision cannot be recalled', are totally

unjustified, for the irrevocable divorce cannot be pronounced until a temporary separation has taken place twice and the experiences of both have shown that the marriage relationship cannot be continued. It should be noted that the irrevocable divorce cannot be pronounced all at once. The special checks on divorce have already been mentioned, and it may be added here that the third or the irrevocable divorce would be very rare if the rules relating to divorce as given in the Holy Qur'an are observed. Cases are on record in which long years have elapsed between the pronouncement of the first and the second divorce. For instance, the case of Rukana may be noted, who first divorced his wife in the time of the Holy Prophet, then re-married her, then divorced her a second time in the time of Umar, the second Caliph, and finally in the time of Usman, the third Caliph", (AbuDawud 13:3), (Muhammad Ali, op.cit., Footnote 303).

"*Talaq or divorce, is strongly condemned by the Muhammadan religion*, and it should not be resorted to unless it has become impossible for the parties to live together in peace and harmony, but once it is pronounced it is upheld as valid, although there may be no good cause for it. It is described in a precept of the Prophet as the worst of all the things which the law permits.... There are certain limitations imposed by the law upon the right of the husband to dissolve the marriage. The object of these rules is to ensure that the husband was not acting in haste or anger and that separation became inevitable in the interests of the husband and the wife and their children", (Abdur Rahim, op. cit., pp. 335-336).

I have dealt at some length with *talaq* by the husband against the wife, and *Khula* or divorce by the wife against the husband. There are still left three other kinds of divorce which are recognized by the Islamic law:

The *third* kind of divorce is called *Mubarat.*

"*Mubarat* (in law) signifies *mutual discharge* from the marriage tie. Under the Sunni law, when both the parties enter into a *Mubarat*, all matrimonial rights which they possess against each other fall to the ground", (Ameer Ali, *op. cit.* vol. ii. p. 578).

Thus under *Mubarat* if both the husband and the wife realize that the marriage has been a failure, they may mutually agree to separate, and this without the necessity of an intervention by the *Qazi* or Judge. This, again, is a power which places woman in a position of advantage, since in cases of discord she may persuade her husband to agree to divorce by mutual consent. In a divorce by mutual consent, the husband cannot compel the wife to forgo the whole or any part of her dower.

"A wife who has obtained a release from the marital tie by *Khula* or *Mubarat* is entitled to maintenance during her *iddat", (Ameer Ali, op. cit, vol. ii.p. 580).*

The *fourth* kind of divorce is a *judicial decree* pronounced by a competent Court. "When the husband is guilty of conduct which makes the matrimonial life intolerable to the wife, when he neglects to perform the duties which the law imposes on him as obligations resulting from marriage, or when he fails to fulfil the engagements voluntarily entered into at the time of the matrimonial contract, she has the right of preferring a complaint before the *Kazi* or Judge and demanding a divorce from the Court. The Judge has the power of granting a divorce not only for habitual ill-treatment, for non-fulfilment of ante-nuptial engagements, for insanity, but also for incurable impotency existing prior to marriage. The power of the *Kazi* or Judge to pronounce a divorce is founded on the express words of Prophet Muhammad: *'If a woman be prejudiced by a marriage, let it be broken off* ' (Bukhari)", (Ameer Ali, op.cit., vol. ii. p. 581).

The *fifth* kind of divorce is a divorce pronounced by the wife against the husband in virtue of *delegated authority* to the wife by the husband.

"An agreement made whether before or after marriage by which it is provided that the wife should be at liberty to divorce herself from her husband under certain specified contingencies is valid, if the conditions are of a reasonable nature and are not opposed to the policy of the Mohammedan law. When such an agreement is made, the wife, may, at any time after the happening of the contingency, repudiate herself in the exercise of the power, and a divorce will then take effect to the same extent as if the *talaq* has been pronounced by the husband. *The power so delegated to the wife is not revocable,* and she may exercise the

power even after institution of a suit against her for restitution of conjugal rights", (Mulla, op.cit., p. 191; Ameer Ali, op.cit., vol. ii pp. 554-555; and Abdur Rahim, op.cit., p.338).

This power of the wife is technically known as *Tafweed* and is a very important power indeed.

To sum up, the principles of the law of divorce in Islam are as follows:

(a) Islam recognizes the necessity of divorce, as it is indispensable for the maintenance of healthy society and the general happiness of human relations.

(b) Islam does not give unfettered power to the husband to divorce his wife. Various forms of restraint have been placed on the exercise of such power by him.

(c) The true spirit of Islam is against the exercise of this power without sufficient cause. The Prophet's condemnation of easy divorce deters to this day those who would like to flout the law.

(d) For the first time in human history, Islam gave to the wife a corresponding right to divorce herself from her husband in cases where their life is one of continued misery. In this respect, again, Islam treats women far more justly and equitably than other religions.

(e) Finally, Islam faces the fact of human frailties and intolerance in conjugal relations quite frankly. It does not idealize the marital tie to the extent of condemning the married couple, in cases of disagreement, to eternal bitterness and misery. It regards marriage as a *civil contract* and not a sacrament, with the result that like all other civil contracts it can be terminated under certain circumstances. Compare this with the attitude of Hinduism and the Roman Catholic Church, and one can safely assert that it is Islam, and Islam alone that offers the ordinary man and woman greater chances of happiness. But in spite of the permission to have recourse to divorce, it is very rarely taken advantage of, and Muslim marriages are, on the whole, quite successfull and harmonious.

REMARRIAGE OF WIDOWS AND DIVORCEES

The following verse enables *divorced women* to remarry:

(a) "And when you have divorced women and they have ended their term (of waiting), then do not prevent them from marrying their (prospective) husbands when they agree among themselves in lawful manner..." (2:232).

The right of maintenance of a divorced woman during her *iddat* has been dealt with in the subsequent chapter on the "Proprietary and Personal Rights of Women."

The permission for *Widows to remarry* is contained in the following verses:

(a) "And (as for) those of you who *die* and leave wives behind, they should keep themselves in waiting for four months and ten days, then when they have fully attained their term, there is no blame on you for what they do for themselves in a lawful manner, and Allah is aware of what you do". (2:234).

(b) "And there is no blame on you respecting that which you speak indirectly in the asking of (such) women in marriage or keep (the promise) concealed within your minds....." (2:235)

The permission for widows to remarry was denied, as of right in the days of ignorance. As we have seen, the heirs of the deceased man inherited his widows. All this, Islam reforms by giving to the widow the right to choose her own spouse without interference from the heirs. Her rights of inheritance are dealt in the following pages.

The reason for the waiting is that the divorced woman or the widow may be pregnant, in which case the period is extended to the time of delivery. There should be no doubt as to who the real father of the child is, which is necessary in determining questions of inheritance and other rights of personal succession.

INHERITANCE

TURNING to the laws of *Inheritance,* we get the following verse from the Qur'an :

(a) "Allah enjoins you concerning your children; the male shall have the equal of two females, then if they are more than two females, they shall have *two-thirds* of what the deceased has left, and if there is one, she shall have half;

and as for his parents each of them shall have the *sixth* of what he has left if he has a child, but if he has no child and (only) his two parents inherit him, then his mother shall have the *third*; but if he has brothers, then his mother shall have the *sixth*, after (the payment of) a bequest he may have bequeathed or a debt..." (4:11).

"When the *daughters* are the sole heirs they are entitled to a share of two-thirds. The share of two-thirds to which 'more than two' daughters are entitled remains the same even when the daughters are two only; and so in practice they have always been judged to be entitled to two-thirds of the property. This is further evident from the analogy of two sisters, who are entitled to two-thirds of the property when they are the sole heirs. (4:177). As to those different cases in which there are others who inherit along with them, they are also considered in this verse and in that which follows. Where the deceased is survived by parents, the parents first take their respective shares, and the residue goes to the children, if there are any, failing which, the share of the parents is increased. But in case the deceased has brothers, the mother receives the same share as she would have received if the deceased had children. This is the second case. It may be noted that in all cases the payment of bequests and debts take precedence of the shares of the heirs", (Muhammad Ali, *op. cit.,* footnote 546, 547).

(b) "And you shall have half of what your wives leave if they have no child, but if they have a child, then you shall have a fourth of what they leave after (payment of) any bequests they may have bequeathed or a debt; and they shall have the fourth of what you leave if you have no child, but if you have a child, then they shall have the eighth of what you leave after (payment of) a bequest you may have bequeathed or a debt; and if a man or a woman leaves property to be inherited by neither parents nor offspring, and he (or she) has a brother or a sister, then each of them shall have the sixth, but if they are more than that, they shall be sharers in the third after (payment of) any bequests that may have been bequeathed or a *debt that does not harm others*. This is an ordinance from Allah: and Allah is Knowing, Forbearing". (4:12)

"This is the third case, and it deals with the question when the deceased leaves a husband or a wife with or without children. The husband or the wife takes his or her share first, as in the case of parents, and the residue goes to the children.

"If there are parents as well as husband or wife with children, the first two would take their shares first, and the residue would go to the children, whether males alone or females alone, or males and females mixed. The two-thirds share for two or more daughters can only be given when there are neither parents, nor husband or wife; otherwise they take the residue, as in the case of sons or sons and daughters. (Muhammad Ali, *op, cit.,* Footnote 548).... By a brother or a sister is meant a brother or a sister on the mother's side. A similar case when the deceased has neither parents nor offspring, and has brothers or sisters or both (where real brothers and sisters, or brothers and sisters on the father's side are meant), is dealt with in the concluding verse of this chapter, which is as follows:

(c) "They ask you for a decision of the law, say: Allah gives you a decision concerning the person who has neither parents nor offspring; if a man dies (and) he has a *sister,* she shall have half of what he leaves, and he shall be her heir if she has no son; but if there be two (sisters), they shall have two-thirds of what he leaves; and if there are brethren, men and women, then the male shall have the like of the portion of two females; Allah makes clear to you lest you err; and Allah knows all things", (4:177).

Reverting to verse 4:12, we notice that the brothers and sisters take the place of children in such a case (i.e. where the deceased leaves neither parents nor offspring), a view which is reinforced by the rule in the above verse (4:177). "As in the case of those who have no children, there is much likelihood of their burdening the estate with unnecessary debts, or even admitting debts that have not really been contracted, and of making bequests that would leave nothing for legal heirs, the words *without harming others* are added to make it clear that debts and bequests in such a case shall not prejudice the rights of the legal heirs", (Muhammad Ali, *op. cit.,* footnote 550).

To summarize the Islamic law of inheritance where it deals with women, we observe :

(a) That Islam does not give unfettered power of testamentary disposition of one's property. The rights of heirs are jealously guarded.

(b) That before inheritance can be distributed, all valid debts, funeral expenses, widow's dower, bequests, etc., must first be paid.

(c) That the rights of females generally are recognized, although their shares are less than those of males. There are two reasons for this. Firstly, as men are the chief breadwinners, and as wealth is increased principally by the efforts of men, they are to have more than the women, who although they contribute their share towards the family riches, yet bear a lesser burden in the accumulation of wealth. Secondly, women, before marriage are maintained by the father, and after marriage they are maintained and supported by their husbands. Thus their need for wealth generally is less than those of men.

(d) That on the death of a man, his *mother*, his *widow* and his *daughters all inherit simultaneously*. Their shares vary according as to whether the deceased had parents, wife and children or not. The *widow* and the *mother* are *sharers* in the deceased's property, and they, along with other sharers, are paid first. Then come the *daughters*, who take as *residuaries*. Sons as such have no preference over daughters. In the absence of parents and offspring, the *sisters* of the deceased also inherit. Among the other *female* relatives, *grandmothers, half-sisters, son's daughters,* etc., are not over-looked. They too inherit under certain circumstances. Broadly speaking, therefore, the general policy of Islamic law is to recognize the rights of women to inherit as far as possible. That they were far in advance of anything that existed before the Prophet is amply clear from this comparative study. Even to-day, it is superior to Hindu law, as the latter allows the widow either merely *a life-interest* in the property, or she comes in as absolute owner *after the great-grandson*. Again, *under* Hindu law, *the daughter takes only on the death of the widow,* and even

then there is a certain order of precedence, as we have observed, which must be followed. In all these respects, Islam has accorded to women better rights and a higher status.

PROPRIETARY AND PERSONAL RIGHTS OF WOMEN

(a) "O You who believe! do not devour your property among yourselves falsely, except that it be by trading by your mutual consent, and do not kill your people; surely Allh is Merciful to you", (4:29).

Though the words are general, yet the verse is especially directed to guard women's rights to property, for usually it was the woman whose property was usurped, and this unjust aggression is forbidden, as is also clear from the following verses :

(b) "And whoever does this aggressively and unjustly, We will soon cast him into fire; and this is easy to Allah", (4:30).

(c) "And do not covet that by which Allah has made some of you excel others. Men shall have the benefit of what they earn *and women shall have the benefit of what they earn;* and ask Allah of His grace, surely Allah knows all things", (4:32).

These *verses clearly entitle women to separate ownership of property, whether married or not,* and men are enjoined not to deal unfairly with their property. If unmarried, her relatives or guardians must preserve it for her; and if married, the husband should not regard her property as his own. If by her property the husband or the guardian is enabled to make a profit, such profit should go to her, after deducting a reasonable sum for the management or conduct of such business. Again, should the woman, whether single or married, earn some money either by her skill or by adopting a profession or trade or by other lawful means, then such income is exclusively hers. We have seen that in this respect Islam treats woman as a *feme sole*. Abdur Rahim says:

> "Under the Muhammadan law the husband does not acquire any right to or control over his wife's property by the fact of marriage. Whatever property she had at the time of marriage remains absolutely her own and at her disposal, and she is under no disability to acquire property by reason of coverture. That is to say, *a woman's legal capacity is in no way affected by marriage,* except as regards contracting

conjugal relations with others", (Abdur Rahim, *op. cit.,* p. 333).

That the position of the wife and the mother has been greatly raised by Islam is also clear from the following rights which she possesses :

(a) *Right of Mother to Custody of Infant Children.*
"The mother is entitled to the custody of her *male child* until he has completed the age of seven years, and of *female child* until she has attained puberty, and the right is not lost, though she may have been divorced by her husband", (Mulla, *Mahomedan Law*, p. 198); and Ameer Ali, *Mahomedan Law*, vol. ii. pp. 293-294).

(b) *Right of Maintenance*
"The wife has a right corresponding to that of the husband to demand the fulfilment of his marital duties towards her. She is also entitled to be provided with proper accommodation separate from the husband's relations and to be maintained in a way suitable to his own means and the position in life of both. If he refuses or neglects to maintain her, she can pledge his credit. She has also a right if the husband has more than one wife to be treated on terms of strict equality with the others", (Abdur Rahim, *op. cit.,* p. 334; and Mulla, *op. cit.,* p. 174).

(c) *Dower—a Debt.*
"She is further entitled to the payment of her dower. If such portion of her dower as is payable before dissolution of marriage has not been paid, and she has not yet surrendered her person, she may refuse her conjugal society and, according to Abu Hanifa, she may do this even after surrender..... *Mahr* or dower is either a sum of money or other form of property to which the wife becomes entitled by marriage. It is not a consideration proceeding from the husband for the contract of marriage, but *it is an obligation imposed by the law on the husband as a mark of respect for the wife,* as is evident from the fact that the non-specification of the dower at the time of marriage does not affect the validity of the marriage. She or her guardian may stipulate at the time of marriage for any sum however large as dower. If no sum has been specified, she is entitled to her

proper dower --- that is, the dower which is customarily fixed for the females of her family.... The wife's right to dower becomes complete on the consummation of marriage either in fact or what the law regards as such, namely, by valid retirement, or on the death either of the husband or the wife. In case of dissolution of marriage by the husband or of separation for some cause imputable to the husband *before* there has been consummation or valid retirement, the wife becomes entitled to *half* the specified dower, and if no dower has been specified to a present called *mutat*" (this is expressly based on the Qur'an, 2:236-237): "In case the separation was due to some cause imputable to the wife herself, she will not be entitled to any dower or present if there has been *no consummation of the marriage*. If a marriage has been annulled on the ground of invalidity, the wife will not be entitled to more than her proper dower", (Abdur Rahim, *op. cit.*, pp. 334-335).

"The *widow's claim for dower* is a debt payable out of the estate of her husband, and it must, like all other debts, he paid before legacies and before distribution of the inheritance," and when "she is in possession of the property of her deceased husband, having obtained such possession lawfully and without force or fraud, and her dower or any part of it is due and unpaid, she is entitled as against the other heirs of her husband *to retain that possession* until her dower is paid ---- If she is dispossessed of such property, then she may institute a suit for recovery of possession", (Mulla, *op. cit.*, pp. 179, 181-182).

(d) *Maintenance during Iddat.*

(1) "And for the *divorced women* (too) provision must be made according to usage; (this is) a duty on those who guard (against evil)", (2:241).

It seems that the Qur'an also allows *maintenance to widows for a year,* besides their right to inherit, as is shown from the following verse :

(2) "And those of you who *die* and leave wives behind (making) a bequest in favour of their wives of maintenance *for a year* without turning (them) out, then if they themselves go

away, there is no blame on you for what they do of lawful deeds by themselves, and Allah is Mighty, Wise", (2:240).

But in British India this right of the widow to maintenance is not recognized, as the Courts regard it as having been abrogated by subsequent verses. Muhammad Ali, however, is of the opinion that the above verse has not been abrogated by any other verse in the Qur'an. On the contrary, he believes that this verse is in the nature of an *additional* provision for the widows, (Muhammad Ali, *op. cit.*, footnote 318; and Mulla, *op. cit.*, p. 174).

■

CHAPTER X
CONCLUSION

SPEAKING of the *legal reforms* of Muhammad, Ameer Ali says :

"The whole history of Mohamedan legislation is a standing rebuke to those who consider that the position of women under the Islamic laws is one of exceptional severity and degradation."

One of the great results of the new legislation, therefore, was to raise women in the scale of civilization, by elevating their moral and social position, and giving the widow, the mother, the daughters and sisters, heritable rights---- "The Prophet of Islam enforced as one of the essential teachings of his creed ---- *Respect for women*; and his followers, in their admiration for the virtues of his celebrated daughter (Fatima), proclaimed her 'the Lady of Paradise' (*Khatoone Jannat*) as the representative of her sex..... Mohammed secured to women in his system rights which they had not before possessed; he allowed them privileges the value of which will be more fully appreciated as time advances. *He placed them on a footing of perfect equality with men in the exercise of all legal powers and functions*", (Ameer Ali, *Mohamedan Law*, vol. ii. pp. 24-26).

Among the Arabs women were, and are, still free. It cannot be denied that *the Qur'an gives women the right to appear in public*, as the following verses clearly show :

(a) "And say to the believing women that they cast down their looks and guard their private parts and not display their ornaments *except what appears thereof,* and let them wear their head-coverings over their bosoms, and not display their ornaments except to their husbands or their fathers..... and *let them not strike their feet so that what they hide of their ornaments may be known.....*" (24:31).

(b) "Say to the believing men that they cast down their looks and guard their private parts; that is purer for them; surely Allah is aware of what they do", (24:30).

Here we get similar injunctions to both men and women. Both are required to cast down their looks and guard their private parts. Had the Qur'an forbidden women to appear in public, there would have been no necessity for it to order *men* "to cast down their looks." It would have been meaningless. Muhammad Ali, commenting on the above verses, remarks :

"To guard the relations between males and females and to check a too free intermingling of men and women, the Qur'an now lays down another injunction in addition to that which requires both sexes to go abroad with their looks cast down..... But women must observe some further directions. The injunction which relates to women in particular is to keep their ornaments concealed. There is a difference of opinion as to what *zinat*, or *ornament*, means. According to some it includes the beauty of the body, while according to others it is exclusively applied to external ornaments and adornments. The use of the same word in the concluding portion of the verse (24:31) ---- *let them not strike their feet so that what they hide of their ornaments may be known* ---- supports the latter view, as the only ornaments that can be known by the striking of the feet are external ornaments. But even according to those who include the beauty of the body in the significance of *zinat*, it is permissible for a woman to *have her hands and face uncovered*, as being allowed under the exception *what appears thereof*, as without uncovering these it would be impossible for women to take part in any business; the rest of the body and the ornaments upon it, whether in the form of tight clothes or of gold and silver ornaments, are to be kept concealed by a long head-covering or, say, an overcoat....." (Muhammad Ali, *op. cit.*, footnote 1751).

A reference to Islamic history clearly proves that women often played important roles in Muslim society. To take but a few of numerous instances, we may note that the Empress Zubaida was a gifted woman and an accomplished poetess, and it is to her generosity that Mecca is provided with that much-needed canal which bears her name. Under the Abbasides, Arab maidens went to fight on horseback, and even commanded troops. The mother of Muqtadir herself presided at the High Court of Appeal, listened to applications, gave audiences to dignitaries and foreign envoys. The Shaikha Shuhda, in the sixth century of the *Hegira*, lectured in Baghdad on history and bel-

les-letters. One of the most famous lady-jurists was Zainab, daughter of Muwayyid, who was a pupil of some of the greatest jurists of her time, and she was licensed to teach law. Again, under the Omayyads women were foremost in culture and refinement. Both Granada and Cordova produced women eminent in the arts and the sciences, such as Nazhun, Zainab, Hamda, Hafsa, Saffiya, and Maria, (Ameer Ali, *A Short History of the Saracens,* pp. 199-201, and 455 *et seq.*).

"The system of seclusion existing generally among Muslims," continues Ameer Ali, "did not come into vogue until the reign of the Omayyad Walid II. Borrowed originally from the Persians and the Byzantines, its practice became common owing to the character and habits of the sovereign. It is an historical fact that the custom of secluding women prevailed among most nations of antiquity. The Athenians (as we have noticed before) certainly observed it in all its strictness. In later times it found its way among the Byzantines, who claimed to be inheritors of Athenian culture. From them it descended to the Russians, among whom it was maintained with ludicrous rigour until Peter I abolished it by his usual drastic methods.... Taken as a whole, woman's condition is not more unfavourable than that of many European women. Her comparative backward condition is the result of want of culture among the community generally rather than of any special feature in the Islamic laws or institutions. *Her legal status is decidedly superior to that of European women.* The social immunities she enjoys allow the fullest exercise on her part of the powers and privileges which the law gives to her. She acts, if *sui juris*, in all matters which relate to herself and to her own property in her own individual right without the intervention of father or husband. She appoints her own attorney, and delegates to him all the powers which she herself possesses. She enters into valid contracts with her husband and her male relations on a footing of perfect equality. If she is ill-treated, she has the right to have the marriage tie dissolved. She is entitled to pledge the credit of her husband for the maintenance of herself and her children. She is able, even if holding a different creed from that of her husband, to claim the free and unfettered exercise of her own religious observances. If the husband is possessed of means, he is bound to place at his non-Muslim wife's disposal some conveyance to take

her to her usual place of worship. He is debarred from molesting her in the smallest degree on the exercise of her faith, or depriving her of the custody of her children without valid reason, such as misconduct or tampering with their religion. Her ante-nuptial settlement is her own by absolute right, and she can deal with it according to her own free-will and pleasure. To become entitled to its enjoyment, she requires no intermediate trustees or next friends. When she is aggrieved by her husband she has a right to sue him in her own individual capacity. Her claim for her ante-nuptial settlement on the estate of her husband has priority over all unsecured debts and she ranks in *pari passu* with secured creditors ...." (Ameer Ali, *Mahomedan Law*, vol. ii. pp. 25-27).

Where, then, is the degradation of woman in Islam! Rather, the Qur'an emphasizes :

(a) "And whoever does good deeds, *whether male or female*, and he (or she) is a believer — these shall enter the garden, and they shall not be dealt with a jot unjustly", (4:124).

(b) "Allah has promised to the believing men *and the believing women* gardens, beneath which rivers flow, to abide in them, and goodly dwellings in gardens of perpetual abode...." (9:72).

For the first time spiritual, legal, and social equality is conceded to woman, and thus in its treatment of the relationship of man and woman, Islam has given to mankind a code of laws which for their practicality, equity, far-sightedness, and universality remains to this day unparalleled. Its service alone in this respect should earn for it the undying gratitude of humanity. From the very status of a slave, from the very dust beneath man's feet, Islam has raised woman to be man's companion and partner in life. It is a glorious chapter in the history of human progress and civilization!

Blessed is the name of Muhammad, who said: "Paradise lies at the feet of thy Mother". Thus on Woman he bestowed the signal honour of being the true Mother of Humanity and the twin child of Nature!

■

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STATUS OF WOMAN IN ISLAM

BY

AL-HAJJ KHWAJA KAMALUDDIN

WOMAN FROM JUDAISM TO ISLAM

Alas! life is, after all, a mirage, and the world an illusion or *maya*, as styled by the Hindu philosophers. A seeming happiness not very seldom turns out to be an affliction, and apparent elysium a slough of despond. No cheerful morn arose but had its coming shadows, and no sunny day but followed by chill and breeze; as if pain and pleasure were the twin daughters of Time and Space, and man a helpless plaything in their hands. It is a truism; and no one tasted its bitterness more shockingly than our first parents some six thousand years ago. They were hardly allowed to tread freely on enchanted grounds in the Happy Valley when the cup of misery came to be quaffed off, and they had to drain it to the dregs. By one event all felicity and bliss became misery and tribulation.

EVE'S REASONS TO TASTE THE TREE

What a transport of delight, when the Lord God was pleased to plant a 'garden in the east of Eden', and placed Adam in it! 'Every tree that was pleasant to the sight and good for food was made 'out of the ground', and a 'river went out of Eden' to water the garden and to add to its beauty and charm. Adam was made the lord of the universe and 'every beast of the field and every fowl of the air was brought unto him to be named', and called so afterwards. But 'Adam was not happy in them. There was not found a helpmate for him'. "Bone of my bone and flesh of my flesh", was the craving of the human soul, and to gratify it 'woman was taken out of man to make them one flesh. Happy in each others' company, they began to bask in the sunshine of palmy days; but alas halcyon days are numbered and honeymoon consists of few weeks. Besides, woman, people say, has her ill star, which begins to rise when she is left alone. Her inquisitive nature it is also said is a thorn in the side, which troubles her when without man, chiefly concerning things prohibited or unknown. I know not how far this verdict of man on woman is true, but if it needs some corroborative evidence in its support, I may, with your pe nission, ladies refer to our first mother, from whom my better half, I think, has inherited her nature. Eve never thought of the tree of knowledge when with Adam. His companionship was sufficiently entertaining to leave any other thing to occupy her mind; but when without

Adam, her curiosity could be easily excited by the tempting spirit — and an idle mind is the temple of the arch-fiend. She must possess, Eve thought, what had been prohibited and denied to her. Besides, reason was on her side. Was it wrong to eat of the tree of Knowledge? Did God mean to keep them in ignorance? To think so would be blasphemy. Was it wrong, then to have her eyes opened to good and evil; and, if it was necessary to shun evil, will she not be better qualified for it when enabled by eating, of the tree to distinguish between good and evil? Her being unwise will not add a whit to Divine glory nay, the wiser she becomes the more intense will become her sense of thanksgiving and glorifying God. Has not God given her faculties to acquire knowledge and wisdom? and, if so, they must be cultivated. Eve reasoned on all these questions before she took the fatal step and could not see any rational explanation of the Divine prohibition a mystery to and to her credit, I may say, a mystery to the whole world since then. A tree to be desired 'to make one wise' would be last thing to be grudged by a beneficent and benevolent God. She 'took of the fruit thereof and did eat;' she became possessed of the knowledge of good and evil, — a happy transformation, to become wise of the unwise and sage of the ignorant. A rare gift and fortunate acquisition; and unselfish as woman is by nature, Eve could not grudge that to her husband. 'She gave also unto him and he ate the fruit of the tree of Knowledge.' But God was 'a Jealous God', as he styles Himself in giving the Ten Commandments to Moses. 'Behold the man is become as one of us to know good and evil', annoyed Him. He was also anxious, lest Adam 'put forth his hand and take also of the tree of life and eat and live for ever.' Therefore the Lord God sent him forth from the garden "to till the ground from where he was taken." This was the final judgement. Those were not the days of chivalry besides. Adam being alone had no scruples to bring blame against the weak woman to save himself, a nature, perhaps, inherited by most of his sons "The woman whom thou gavest, to be with me, she gave me of the tree", Adam argued in his defence before God, and it was contemptuously and rightly rejected, as no man has right to aggrandise himself at the cost of a woman. Adam was condemned to eternal perdition. One who was happy was "to be in sorrow" all the days of his life, the lord

of the universe, and he fell at the mercy of its insignificant atom even.

FALL THROUGH WOMAN

For him, 'out of the ground made the Lord God to grow every tree that is pleasant to the sight and good for food'. But 'the ground became cursed' for his sake and could only bring him thorns and thistles. What a precipitate fall, and what an irony of fate; and this all through woman, as the book of Genesis says and how could she be therefore in the good graces of man and his progeny, ladies and gentlemen? With such antecedents she could hardly claim or receive status of equality and fair treatment at the hands of man.

THE BOOK OF GENESIS RESPONSIBLE FOR FEMALE DEBASEMENT

I may be excused, ladies and gentlemen, if I have taken some time to narrate to you what you could have read word for word in the opening pages of the Old Testament; and this for one reason: The beginning chapters of the Book of Genesis, in my humble judgement, are chiefly responsible for all that has been said and written ever since by this *unselfish* creature - I mean man. Would you not excuse him, gentle ladies, advised as he stood, in the light he received from the house of Jacob he became somewhat inconsiderate of your rights and thoughtless in his general dealing with the fair sex? For instance, in matters of marriage - the most eventful turn in one's life, a pivot on which hinges the lifelong misery or happiness - he, under Judaism, leaves no descretion to woman. A chattel or a household utensil, though very embellishing and ornamental, to be disposed of or inherited, and then accepted or rejected at the sweet will of the heir. "If" (says Deuteronomy 25:5) 'brethren dwell together, and one of them die and have no child, the wife of the dead shall not marry without unto a stranger, her husband's brother shall take her to him to wife." So long as a maiden in the house of her father, woman was to be ruled by one who was the author of her body, sometimes bartered, sometimes given to make up family fueds, and sometimes to bait enemies. Saul bore hatred to David, and regarded him as his enemy; while Michal, his daughter, loved that begotten son of God. "I will give him her that she may be a snare to him", was the only consolation which

Saul had in giving his daughter to one he hated from the very core of his heart (1 Samuel 18:21).

Beyond her average household duties woman was not suffered to be an auxiliary to man even in ordinary walks of life. She was not wanted beyond the limits of her household sphere, and had to suffer extreme penalties sometimes for her trespass, though done under the crying need of the moment, and actuated by the cravings of human nature. When men strive together one with another", the Judaic law provides, "and the wife of the one draweth near for to deliver her husband out of the hand of him that smitteth him, and putteth forth her hand and taketh him by the secrets, thou shalt cut off her hand, thine eye shall not pity her."

Women in all ages have been wrongly stigmatised for intellectual deficiency by nature and want of commonsense, and Judaism was no exception. They are also blamed for possessing a nature which, it is alleged, is volatile; and arbitrary as the judgement is, it has done her a great harm; her words in consequence seem to claim less credence, and deserve no serious consideration. Even in this age of culture and enlightenment, when woman has given lie to the received opinion, hardly there lives a language which lacks in proverbs casting reflection on the trustworthy nature of female words; and I am not surprised, therefore, if some 3,500 years before, her vows and words carried no weight with the Israelites, and were, considered not binding on her unless allowed by her father or husband, as the case was; even if she vowed a vow unto the Lord, and bound herself by a sacred bond it was of 'none effect', and fortunately for her, Jehovah was also lenient enough to forgive her (Numbers 30:3-7).

LAW OF INHERITANCE

The Jewish law of inheritance, however, showed more consideration to woman than any other system of law obtaining in other nations, and upheld even now in many a so-called civilised nations. No doubt she was not accepted, as heir to her father in the presence of her brother, but on the death of Zelophehad, the son of Hepher, who died without male issue, his daughters claimed inheritance against the demands of his brethren. Moses brought their cause before the Lord, and Jehovah was pleased

to give the law in these words: "And thou shalt speak unto the children of Israel, saying, if a man die and have no son, then ye shall cause his inheritance to pass unto his daughters' (Numbers 27:8,9). It may be said to the credit of Judaism that it was an improvement upon almost all the systems of law then current and now obtaining in many a quarter which favour collateral succession even in remote degrees and exclude females absolutely.

POLLUTION AND WOMEN

There is, however, another important question on which opinions diverge. Will you, my fair audience, allow me to inform you that 'fair sex' or 'better half', as his glib tongue calls you now, man has all through been hypocrite to you when left to his discretion. In his heated moments, and that only to complete his own pleasure in female company, he has an inexhaustible store of honeyed words to lavish upon, and on every step fairness and chivalry grace his movements; but once freed from the spell of the moment becomes as hard and cold as stone. Almost all his great religions have contributed to the degradation of your sex; he has treated you in sacred matters, pardon me to say, as 'an unclean thing'. In Japan, in olden times, he did not allow you to pray or take any part in religious exercises. In China you were not suffered to go in the temples. In India, under certain Shastras, you have no business with the sacred texts, and you are as impure as falsehood. If you touch a consecrated image its godship is destroyed, the image is defiled and must be thrown away. And as (2 Chronicles chap 8) 'Solomon brought up the daughter of Pharaoh out of the city of David unto the house that he had built for her, he said, My wife shall not dwell in the house of David, King of Israel, because the places are holy whereunto the ark of the Lord hath come', it is argued that Judaism, also regarded woman to be unclean. But I demur with this view. I find some women in the Bible as recipient of Divine revelation; Virgin Mary and the mother of Moses, for instance. Another barren woman was given good tidings of being blessed with son by the angel of God. These Divine visitations exculpate woman from the charge of pollution. As to Solomon's not allowing the daughter of Pharaoh to remain in the holy place, her extraction was responsible for it. Judaism does not permit proselytisation, and she was not of the house of Jacob.

WOMAN IN CHRISTIANITY

It is a matter of great regret that the short ministry of Jesus Christ did not leave Him time enough to improve the existing condition of women under Judaism, though his general treatment of the female class was much more favourable. Besides, He did not come 'to destroy the law and the prophets,' as He said in His Sermon on the Mount, 'but to fulfil them.' and consequently, He could not add to, or subtract from, the law in the hands of the Israelites. St. Paul, though absolves us of the law, but 'of the woman came the beginning of sin, and through her we all die,' is the corner stone of his religion, and his followers, who lost the garden of Eden through woman and incurred eternal perdition, may be excused if they are less tolerant in the use of hard names on woman. They had sustained an irreparable loss, and hence their vociferous anger. 'Adam was not deceived, but the woman being deceived was in the transgression,' was the verdict of the Apostle of the Gentiles, and the holy words, coming from such an authority, found echoes and re-echoes from time to time in the whole medieval Church, and woman was blessed with pious aspersions every now and then.

ISLAMIC VIEW OF WOMAN.

What a pity, Woman, 'the dearest of friends, counterpart of man, susceptible to all healthy and salutary influences, the fountain of love and affection mixed with guidance and teaching for the young world. Woman, at whose loving knees I first learnt the name of my Creator; in her snug lap, I, then a helpless baby, learnt the first fundamental formula of Islam La ilaha-ill-Allah, Muhammadur- Rasoolullah. Woman, the most exquisite and finished product of Nature, whose one kiss accompanied with pure and faithful heart brings a treasure of happiness to man, and seals the two hearts into one. Woman, a safeguard against sin, as the Book of Islam says, a rocky fortress against Satan, a lighthouse of virtue and continence, who can only save man from shipwreck while tossing among the stormy waves of passion, and in the words of Princess Karadje, one whose pure love transforms the brute into an angel, had the misfortune of being painted in the blackest dye under misguided beliefs. And this I say not in poetical vein, but I do believe so, and I have been

taught to do so by Lord Muhammad, the only vindicator of female rights (may the choicest blessings of God be upon his soul!) who, in order to enjoin upon me to pay my respect to my mother, says: "Paradise lies at the feet of thy mother,"

Who as to my treatment to my wife says: "Among my followers, the best of men are they who are best and kindest to their women."

Who to educate woman says: "To acquire knowledge is an equal duty of man and woman."

Who gave woman the status which she never possessed before and said: "Woman is sovereign in the house of her husband."

And who made my better half my only delight when he said: "The world is full of objects of joy and delight, and the best source of delight is a pious and chaste woman."

QURANIC VERSION OF THE FALL OF MAN.

This was the condition of woman in Judaism, as well as in the medieval Church, when Islam came, and allow me to remark, ladies and gentlemen, that these holy judgments, of the Middle Ages Divines seem to me quite justified and consistent with the doctrine on which St Paul constructed the superstructure of his religion. They are logical sequence of what one reads in the episode of our fall in the Book of Genesis, and one who believes in its version must endorse the opinions of the holy fathers. Therefore, the Qur'an, the Holy Book of Islam, which in my opinion could not be a perfect code of civilization without restoring woman to her proper dignity, had first of all to decide the question of woman's responsibility in Adam's fall. "Adam was not deceived but woman being deceived was in the transgression" as St. Paul says, was not the version of the Book of Islam as to our fall: the holy text relating to the event runs thus:

Wa qulna ya Adam-us-kun anta wa zaujukal jannata, wa kula minha ragadan haisu shituma, wa la taqraba haze-hish shajrata fatakoona minazzalimeen. Fa azalla-humash-shaitano-anha fa akhraja-huma mimma kana feehe. (Qur'an 2:35-36). "And we said, O Adam, dwell thou and thy wife in the garden, and eat ye plentiful therefrom wherever ye wish, but to this tree—the tree of discord and dissension (the word used in

the text is *"Shajar."* which means tree as well as discord and dissension)—come not nigh, lest ye become of the transgressors: but Satan made them slip from it, and caused their banishment from the place in which they were."

What a truism, which we experience daily in life. Every husband and wife in their house are Adam and Eve in the garden in the east of Eden if they live in harmony and concord, but no sooner they taste the apple of dissension and discord, than, to quote the word of Holy Qur'an, it causes 'their banishment from the place in which they were.

ADAM AND EVE EQUALLY BLAMABLE

But my object in citing the Quranic text was to draw your attention to the laconic phrase *"Fa Azallahumash-Shaitan."* and Satan made them both slip from it. It clears the whole ground, and brings man on the same footing with woman in matter of transgression. It does not say in the words of St. Paul "Adam was not deceived but the woman being deceived was in transgression." But they both together at one and the same time were led astray, both were at the same time in the transgression; no more respective position of the tempter and the tempted, both tempted simultaneously; both to be blamed or excused equally and in my opinion, if woman is still believed by man, even among advanced nations, as intellectually and morally inferior, the whole blame should lie at man's door. Adam, in the Qur'an, has always appeared to me more chivalrous and nobler than the one I read of in the Bible. To tell you the truth I feel ashamed to trace my lineage from one who did not hesitate to save himself at the expense of his wife. But the final word of God in the book of Islam was my consolation. "The woman whom thou gavest to be with me, she gave me of the tree and I did eat," was not the reply of Adam in the Qur'an. How noble, brave and chivalrous and at the same time penitent and respectful, he is in his confession before God, which is as follows;

"Rabbana zalumna anfusana wa in lam taghfir lana wa tarhamna Lakoonanna minal khasireen." (H. Qur'an, 7:23). "Our Lord, we (not the women only) have done wrong to ourselves and if Thou wilt not forgive us and take mercy on us, we are surely the losers."

Man and woman, no more respectively the tempted and the tempter, as I said before, both the sufferer, both in the same boat. Thus, equality established, and the elated being—I mean man—under the confession of his father, lost all his boasted innocence and pretended negative virtue.

WOMAN IN ISLAM.

But Islam had to make a gigantic effort to restore woman to her real position, which she had lost from time immemorial. No nation could boast a cleaner record in this respect, but one has only to imagine the extreme degradation to which the weak sex was reduced among the Arabs before the advent of the Great Prophet. Most degraded conception of womankind was rooted in the Arab people. She had no voice in any matter. In the house of her husband, as under the Romans, she was only a part of his property. The widow, on his death, also descended to the son as a lawful part of his inheritance. An exception was however, made in the case of the natural mother of the heir, the wives often received the most brutal treatment at the hands of their husbands. The guardians assailed the honour of their defenceless female wards, and tampered with their property. To bury female children was an ordinary occurrence. The time at my disposal, I am afraid, does not allow me, to give, ladies and gentlemen, even a short account of the debasement to which woman was reduced in the Arabs of pre-Islamic days.I would do better, I think, if I read translations of some of the Quranic verses; which were meant to introduce reforms, leaving it to you to see the object and nature of reform. They go thus:

> "And marry not women (says the Book of God) whom your fathers have married, for this is a shame, and hateful and evil way.

"Forbidden to you are your mothers and your daughters and your sisters and your aunts, both on the father's and mother's side and your brother's daughters, and your sister's daughters and your mother who gave you suck, and your foster-sisters and your wives' mothers, and your daughters-in-law" (H. Qur'an 4:23). "Ye murder not your children" (H.Qur'an 17:31) "and when the female child had been burned alive, shall be asked for what crime she was put to death" (H. Qur'an 81:8,9).

"Give to the orphans their property, and substitute no worthless things of your own for their valuable ones." (H. Qur'an 4:2).

In order to raise the position of woman, which had reached its lowest ebb in all the nations of the world before Islam, the Book of Islam also devoted one chapter to the subject, and to honour woman named the chapter after her; as the title of the 4th chapter in the Qur'an is *(Al-Nisa)* 'Women.' The beginning verse of the chapter is the keynote of the reform introduced by the Qur'an, which goes thus:

> "O men, fear your Lord, who hath created you from one soul, and of his kind created his wife, and from these hath spread abroad as many men and women. And fear your God in whose name ye ask mutual favour, and reverence the woman that bear ye. Verily, is God watching you." (H. Qur'an 4:1).

This verse positively commands kind treatment of womankind. Man and woman proceed from the same origin, same in nature, therefore it is ordered that man, finding woman weak and frail, should not slight her or make light of her position in any way. The injunction is very broad in its significance and comprehensive in its application. Whatever may be the position of man— a sovereign or a loafer— he must show proper regard for all the female relations, wife, mother, sister, daughter, and so on. No disrespect and disregard of their rights and claims is suffered in Islam. *Wa aashiroohumma bil maaroof-* live and associate with them (woman) kindly—is another injunction in the word of God. *Wa lehunna mislul-la-zee, elehinna-"* and if you men have certain rights on them (woman) they have similar rights on you in all fairness," again, says the Qur'an to establish equality of rights between man and woman. That woman and man are equally indispensable to each other's happiness, has been taught in another verse, which, to illustrate the truth, uses a simile of an exquisite beauty: *Hunna libasun lakum wa antum libasun lahunna* (H. Qur'an 2:187)". They, your wives, are a garment for you, as you are a garment for them". What a beautiful and apposite metaphor! Garments hide one's nakedness and such physical defects as are to be concealed, so do husband and wife secure each other's chastity. Our clothes give comfort to the body, and husband and wife find comfort in each other's company. The garment is the grace, the beauty, the embellishment

of the body so, too, are wives to their husbands, as the husbands to them. That love and kindness should be the only rule of life and no enforcement of the authority by man, and no subservience on the part of woman, but affection and tenderness and benevolence should regulate their mutual dealings and feelings, has been brought home to us in the following verse:

Wa min aayatehee an khalaqa lakum min an fusekum azwajan litaskunu ilaiha wa jaala bainakum muaddatan wa rahma. (H. Qur'an 30:21) "And one of His signs is that. He has created wives for you of your own species that ye may be comforted with them, and has put love and tenderness between you."

This is the ideal of wifehood in Islam, and I have not found elsewhere a higher ideal of the mutual relations of man and woman based upon love, affection and equality.

There is, however, a verse in the Qur'an which has excited much ignorant criticism. But before I come to it, allow me to say one word in procreation of human species, nature has assigned different functions to man and woman, and in the fulfilment of what has been allotted to her, woman sometimes becomes incapacitated even to attend ordinary calls of life and gradually loses strength. Besides, beauty, her exclusive acquisition, and Amazonian strength are not in my humble judgement two concomitant things. Mr. Sandow may claim many as disciples here among the fair sex, but the charms of the face, delicate symmetry of limbs, comeliness of countenance, and gracefulness of gait were not designed to face hardnesses of life, which require great strength and sinews of iron. Man, therefore, has been given by nature strength and power in greater proportion, which consequently enable him to have a decided advantage over his fair sister in power of endurance, in dash and girt, and in possession of certain stern morals and some other what are called manly qualities. It is to this superiority of man over woman that Holy Qur'an makes reference when it says:

Arrijalu qawwamoona alan nisa bima fazalullahu baajuhum ala baj, (H. Qur'an 4:34) "Men are superior to women on account of the qualities with which God has gifted the one above the other."

But that this superiority of one cannot be a hindrance in the way of other's advancement—man or woman, as the case may be the book of God says:

> "Do not covet the preference which God has given some of you over others. The man and the woman shall have reward for what they do, and ask God for His Grace." (H. Qur'an 4:36.)

No sex should envy the other for what is peculiar to it. Each shall have reward for his or her action. Let them vie with each other in asking God's grace. The door is open to both. Women have similar rights as men in the verdict of Holy Qur'an, than which, the greater vindicator of female right, cannot be found in the whole range of literature.

SPIRITUAL PROGRESS OPEN TO WOMAN.

According to the teachings of Islam, the capabilities for spiritual or any other kind of progress are equally unbounded in individual man and woman. A religion which establishes equality of woman with man in almost all respects could hardly be expected to be so inconsistent as to teach that woman did not possess soul, yet it is one of those calumnies which have been hurled down over our heads by the ignorance and misrepresentation of the Missionary propaganda against Islam. There is not one word or one line in the whole Islamic literature which warrants it. Of course, some fifty years before the advent of Islam, this very question was in a way at issue. It was at the Council of Macon that a Bishop raised the question whether woman really was a human being. After hot discussion, the majority concluded that she belonged to man's race; "some fathers of the Church, however, were careful to emphasise that womanhood only belongs to this earthly existence, and that on the day of resurrection all women will appear in the shape of sexless beings."

It was to destroy these false notions obtaining everywhere in those days that Holy Qur'an emphasised on woman's personal right to enter into the Kingdom of God. "Enter into Paradise, ye and your wives delighted," says the blessed book.

Again, I read in it: "But whoso doth the things that are right, whether male or female and is believer, whether male or female, they shall enter into paradise."

Again: "Whoso doth that which is right, whether male or female, him or her will we quicken to happily life."

There is, however, a very clear verse which guarantees equally to men and women all kinds of moral and spiritual progress; it goes thus :

"Truly the men who resign themselves to God and the women who resign themselves; the believing men and the believing women; the devout men and the devout women; the men of truth and the women of truth; the patient men and the patient women; the humble men and the humble women who give alms, and the men who fast and the women who fast, and the chaste men and the chaste women, and the men and women who oft remember God; For them God hath prepared forgiveness and a rich recompense" (H. Quran 33:35).

Ponder over these verses, ladies and gentlemen, and you will find that the Book of Islam in one and the same breath believes equally in the capability of man and woman to lead the highest moral and spiritual life. Perhaps these adverse writers on Islam possess a very hazy notion of Soul and its progress, otherwise they should have known that the chief attributes of an advanced soul are the same that have been mentioned in this verse and equally opened to man and woman. Keeping fast and saying prayers with faith in God are the requisites to enable one to work miracles according to the sayings of Christ. The verse, however, mentions these three essentials of spirituality, but also adds to them some other moral excellencies—namely, resignation to God, belief in Him, devotion, truthfulness, patience, humility, charity, and chastity. A religion which produced women like Ayesha, Fatima, Rabia, Lalddidi and many others who received direct revelation from God and held communication with Him not in the current meaningless sense of the word here, but to whom God spoke just as he did to Daniel, Joshua and many other Israelite patriarchs, has been branded under ignorance for disbelief in woman's soul.

In questions of marriage, which I am afraid I shall not be able to deal for shortness of time, excepting this cursory remark that Islam gave full liberty to woman reaching the age of majority; no guardian can marry any girl without first obtaining her consent to the proposed alliance. But it was in matter of

inheritance and the female individual right of property that the teachings of Islam not only make improvement on the conditions already existing, but they leave the present civilization far behind. All the codes of law, ancient and modern, have ignored woman and hardly grant her such individual right of property which the Book of Islam provides.

"Men ought to have a part of what their parents and kindreds leave, and women a part of what their parents and kindreds leave; let them have a stated share,"(H. Qur'an 4:7), is the injunction of the Qur'an, and woman in Islam not only inherits body, but also property, of her physical author. But the Western civilization is so jealous of female identity that no sooner a maiden becomes a wife she not only loses her property, but her very name. But she had practically no name before, being called after the name of her father. Talented women in the West felt the hardness of the system and had to adopt pseudonames to establish their identity. Mrs. Dewes appeared as George Eliot, and the adopted child of the poet, Charles Mackay, as Marie Corelli. But in Islam woman need not do so—her own identity is unassailable. A Muslim wife retains her distinct individuality, and she never assumes her husband's name; and in it lies the secret of her individuality. Coverture has no place in the marriage regulations of Islam. Dwelling on the doctrines of coverture, Prof. Holland observes; "The effect of marriage was to produce a unity between husband and wife, rendering each of them incapable of suing the other and constituting a sort of partnership between them, in which the husband has very extensive power over the partnership of property, while the wife has not only no power of alienating it, but is also incapable of making a will or of entering into any contract on her own account. The common law of England exhibits these disabilities of the wife in their strongest form." Hepworth observes on the same subject as follows: "Our common law gives up the wife so thoroughly unto her husband's power that a woman who comes to the altar young, confiding, beautiful and rich, may be compelled by brutal treatment, for which the law gives her no redress, to quit it after a dozen years, an outraged woman, with a ruined fortune and a wasted frame". The legal position of woman in England has, however, been improved by recent legis-

lative enactments in matter of real property, but the polity of England had to make strides to reach that perfect code of Islam which keeps the property of woman in integrity with full right of enjoyment and alienation. She is an independent co-sharer and a true partner of man. She can enter into any contract she likes, creating rights and obligations in her own name, and her husband has no right of interference. The doctrine of coverture has no doubt given one advantage to woman here. She is protected against certain prosecutions, but it makes her position just the worse, as it makes her property of her husband. Like the slaves of the Romans and the negroes in America, no one prosecutes her for the harm done by them, the owner is responsible, and so the husband here.

I am sorry that the time at my disposal does not permit me to enter more fully even into the questions I have dealt with, and there remain still other important questions like Islamic veil, the so-called seclusion, marriage, divorce, and many other relevant points, which may be discussed on some other occasion.

But, in conclusion, I have to say one word to my suffragette friends. "Thy desire shall be to thy husband, and he shall rule over thee." is the Divine verdict passed on you according to your own Scripture. Why to waste, then, all your energies? "Neither was the man created for the woman, but the woman for the man," I read in the First Corinthians. Why this revolt and rebellion against your master? "Let the woman learn in silence, with all subjection, for I suffer not," says St. Paul, "a woman to usurp authority over the man, but to be in silence." Why this agitation and ventilation of militant spirit? Go and sit quiet in silence and subjection, if you have faith in the Word of God. A nation that took, unfortunately for you, some of Biblical texts as the basis of its legislation cannot realise your situation. Do you wish your men to disbelieve in the Holy Writs? No, madam, it is blasphemy. Be content with your fate, which has been assigned to you in the Gospel. But if you are dissatisfied with the present conditions and have no more patience, my Sacred Scripture has good tidings for you, which says: "Women have similar rights as men, the same is due from them (women) as to them."

EQUALITY OF MAN AND ELEVATION OF WOMANHOOD

Belief in the Unity of God in its purest form established two truths — the equality between man and man and the subservience of the rest of Nature to the human race; the former giving rise to all the good and healthy principles of democracy, and the latter affording stimulus to scientific researches. The democratic spirit of Islam is a well-known verity, but here I will speak only of the blessings which were conferred on Womanhood through the Holy Prophet.

Before Islam, Woman was treated as a chattel. No religion or civilization had as yet raised her to the status that should have been her birthright. She was regarded as an evil but necessary appendage, and she received the worst treatment of all from Christianity. The story of the Temptation in the Book of Genesis, and the basic principle of the Church creed taken therefrom, damaged her position tremendously.

In dealing with the status of Woman, Islam and Christianity stand poles spart. The one has raised her from the lowest possible depths to a level equal to that of man, at a time when her degradation knew no limit; the other thrust her back to thraldom at a time when she was beginning to emerge from it under Roman civilization. This civilization was struggling to raise her status when Christianity came like an icy blast and nipped the efforts in the very bud. The statement, though historically accurate, will surprise many amongst those who are accustomed to listen to the very different story told by Christian writers. But if even Jesus does not seem to concern himself about the female sex, and if those who immediately followed him — and have since been looked upon as the builders of the Church, and filled with the Holy Ghost — did nothing to improve her condition, while their words and actions brought every odium on her; and if Christian States have continued this treatment for centuries, and indeed until recent days, when Woman began to assert herself, how can they declare that Christianity brought an honourable position to Woman?

The Hebrew Law was unfavourable to her. The Divine command, "Thy desire shall be to thy husband, and he shall rule over thee," had the effect of reducing her to the position of a chattel in the house, and so she was, in Judaic society. On the

other hand, it must be remembered that Jesus did not come to destroy the Law, but to fulfil it. Whenever something appeared to him as an abuse of the Law, he expressed his disapproval of it, and tried to reform it. But in the case of Woman his silence shows that the idea of ameliorating her lot never occurred to him, though the self-indulgence of his tribe was peculiarly damaging to womankind.

If Paganism supplied the idea of a suffering Deity and of a crucified Saviour, and the sad event in the life of Jesus favoured their incorporation with Christianity, the legends of the Temptation in Genesis served as a beautiful connecting link between the two. It inspired the story of the Fall of Adam, and through him, the fall of the human race — a theory absolutely, and now admittedly, unknown to the Jews, but initiated by the writers of the Pauline literature to strengthen and explain the Pagan theory of redemption through blood. To that extent it acted well, but it was no service to Woman. The whole blame of human perdition, by reason of this first sin, was laid at her door: "Adam was not deceived, but the Woman being deceived, was in the transgression." Woman consequently could not be in the good books of those who took these expressions as the Word of God and believed in the theory of the Fall of Adam. This explains the cruel attitude which the Early Fathers and the real builders of the Church adopted towards Woman, following, as they did in the footsteps of St. Paul. In fact, her disgrace at the hands of these Fathers was the true and logical sequel to the Christian beliefs, of which the following is an illustration : "Do you know," says Tertullian, when addressing Women, "that you are each an Eve ? The sentence of God on this sex of yours lives in this age; the guilt, of necessity, must live too. You are the devil's gateway; you are the unsealer of that tree; you are the first deserter of the Divine Law; you destroyed so easily God's image."

The Christian apologist of modern culture, while he sees in it medieval savagery and wantonness, cannot rationally deny that "the pious aspersions" of the Father, were not without justification. The logic was simple and true. If it was believed that sin was a heritage and eternal condemnation its price—and so it is believed till to-day— then eternal condemnation was come

through Woman; she opened the door of all human sufferings. She is "the organ of the devil," "The foundation of the arms of the devil," "a scorpion ever ready to sting," "the gate of the devil and the road of iniquity", "the poisonous asp," "the malice of the dragon," "The instrument which the devil uses to gain possession of our souls." These are some of the blessings that Woman received from persons of exalted position in the Church, such as St. Bernard, St. Anthony, St. Jerome, St. Cyprian, and St. Paul, who seem to me to be at the bottom of it. His personal grudge against the sex, in consequence of his suit being rejected by a Jewish young woman, the high priest's daughter, perhaps was responsible for it. Say what you will, if "sin in nature" is the foundation-stone of the sacramental religion, which Christianity has become – the principle of atonement and of the Divinity of Christ are mere corollaries of it, then Woman deserves all that has been said by these Fathers. Present-day culture may not tolerate it, but her real redemption lies only in exposing the falsity of these beliefs. And was not the Holy Prophet, even on this very point, the real benefactor of Woman, seeing that he gave the lie to this crude theology, and took exception to the theory of sin in nature ? He declared that every child was born sinless, and that in the case of the Temptation, man and woman were not respectively the tempted and the tempter, but both of them equally suffered and were equally deceived by the evil agency.

Just at the time when the Christian Church was so outrageously trampling on womanhood, and the rest of the world was treating her no less cruelly, Muhammad came to save the situation. He raised Woman to such a height as she had never dreamed of before — a height which leaves her nothing higher for which to strive.

While the Christian Fathers were harping on the slogan that woman was made for man and not man for woman, Muhammad told the world that woman was the twin-half of man, in commenting upon the Qur-anic verse, that revealed in the following words the great truth that man and woman had come from the same essence and were one and the same in that respect : "O people ! be careful of (your duty to) your Lord, Who created you from a single being and created its mate of the same

(kind) and spread from these two, many men and women; and be careful of (your duty to) Allah, by whom you demand one of another (your rights), and (to) the ties of relationship; surely Allah ever watches over you (4:1)." The Qur'an gave the name of *muhsina* to Woman, which meant that she was neither the "organ of the devil" nor his gateway, but a *rocky fortress against Satan* a lighthouse of virtue and continence that alone can save man from shipwreck while tossing among the stormy waves of passion. The Bible says : "Thy desire shall be to thy husband, and he shall rule over thee," but Muhammad says : "Woman is the sovereign of your house." St. Paul may say : "Let the Woman learn in silence, without subjection, for I suffer not a Woman to usurp authority over the man, but to be in silence," but the Qur'an contradicts him when it says : "Woman has like rights with those of man, — the same is due to her as is due from her." She is not "a scorpion ever ready to sting," but "a garment of man as he is her garment" (2:187); she is not the "instrument of iniquity," as these Christian Fathers call her, but, in the words of the Qur'an, "a fountain of love and affection" (30:21). Let Jesus say to his mother : "Woman what have I to do with thee?" — put whatever construction you like on these words and come with any explanation you please, people in Christendom even to-day reflect this utterance of their Master in their actions — the affluence of sons go hand in hand with the indigence of mothers in the West – mothers are discarded and disregarded – but a Muslim leaves no effort undone to pay all respect and reverence to his mother, because his Prophet Muhammad tells him : "Paradise lies at the feet of a mother." Happy marriage may be a lottery in the West, as some assert, but it makes a wife, in a Muslim house, the dearest of friends, a counterpart of man susceptible to all healthy and salutary influences. It could not well be otherwise, seeing that we are bound to obey the Master who says : "The best of you are they who behave best to their wives." Again he says : "The best of you before God and His creation are those who are best in their own families, and I am the best to my family."

"One of the disciples inquired of the Apostle as to what treatment should be meted out to a wife. He answered : 'Give her to eat when you eat yourself, and clothe her when you clothe yourself; and do not slap her on the face nor abuse her, nor separate yourself from her in displeasure."

"Give your wife good counsel, and do not beat your noble wife like a slave."

"Admonish your wives with kindness."

"A Muslim must not hate his wife; and if he be displeased with one bad quality in her, then let him be pleased with another which is good."

Augustine the Bishop of Hippo denied that women had souls and this infamous tenet was debated at the council of Christian fathers at MACON in Sixth Century, whether any female could enter into the Kingdom of Heaven, and with great difficulty they had come to the conclusion that she might enter into Paradise, but that she would have to be sexless, the Qur-'an brought the gospel to her in the following words :

"Enter into Paradise, ye and your wives delighted."

"But whoso doth the things that are right, whether the male or female, and is a believer, whether male or female, they shall enter into Paradise."

"Whoso doth that which is right, whether male or female, him or her will We quicken to happy life."

When the world was doubtful whether any spiritual advancement was open to Woman at all, the Qur-'an taught the following : "Surely the men who submit and the women who submit, and the believing men and the believing women, and the obeying men and the obeying women, and the truthful men and the truthful women, and the patient men and the patient women, and the humble men and the humble women, and the almsgiving men and the almsgiving women, and the fasting men and the fasting women, and the men who guard their private parts and the women who guard, and the men who remember Allah much and the women who remember — Allah has prepared for them forgiveness and a mighty reward" (Qur'an 33:35). It is only utter ignorance of Islam and blind prejudice against it that comes to the surface when our adverse critics assert that Woman, under Islam, does not possess a soul. It hardly needs any elaborate discussion to refute this piece of foolhardiness. If a Man possesses a soul, Woman must possess one also, seeing that both are, according to the teaching of the Qur-'an, of the same essence.

MARRIAGE ENNOBLED

Muhammad gave a new and noble meaning to the institution of marriage. He sanctified it by making it a channel for the working out of high morality and for developing that germ (Qur'an 30:21) of love and compassion which is embedded in the human breast. The spirit of sacrifice is the backbone of all noble passions; and marriage gives a natural impetus to it, and brings it to the surface. After marriage, man and woman live for each other and for their children. They make every sort of sacrifice for their comfort. Thus family life widens the heart and broadens the consciousness. We learn to feel and do for others as we do for ourselves, and the greater the number of the family, the more occasion there is for this sort of moral discipline. I am inclined to think that polygamy, if carried on in strict observance of the Muslim Law, would be a great help towards that end, though it must needs entail many troubles and hardships. For a man to be equal in his love and in his treatment towards his several wives is a tremendous task of an arduous nature, and if a person succeeds, he is certainly not an average person. But if he is unable to do so, he commits sin, under the Qur-'an, if he takes more than one wife (Qur'an Ch. 4). And in this respect, Muhammad again proves an ideal personality. None of his wives had any complaint of his being partial to another. He was, on the other hand, surprisingly impartial in his treatment of all of them. And there is nothing carnal in the fact of his having so many wives. His was a most abstemious life of starvation and want — a life which could hardly have aroused passions. He was in the prime of his life when he married first, a widow of forty years. He did not take another wife until the Lady Khadija, his first wife, died. He was then fifty-two years of age. Then he married a virgin, the Lady Ayesha. At this time he was compelled to wage war against his enemies, which thinned the ranks of his friends, who gave their lives for him, leaving behind widows, who surely needed shelter and protection. Then it was that the law of polygamy was promulgated, to meet this necessity; neither should it be forgotten that most of the widows who came under the protection of the Prophet as his wives had passed the age of connubial relations. There was no question of desire or of the flesh in these marriages. Rather, it created an occasion for the Prophet to show that a woman, who possesses

no personal charms, has an equal claim on, and should receive an equal share of, all the regard and consideration of the husband — even if he be the husband of some handsome woman.

POLYGAMY

Monogamy should not be taken as a Christian verity. Polygamy was in vogue in Christendom only a few centuries ago, not only among the laity, but the clergy also. Every other religion and civilization has allowed it. Jesus, undoubtedly was not himself a lawgiver, and did not say anything on the subject. But he followed the Mosaic law and was insistent on its observance. The law and practice of the house of Jacob encouraged polygamy, and that to an extent which must sound fantastic to a modern mind, seeing that a patriarch among the Israelites could afford to bring five hundred wives under his roof. Jesus tried, among other things, to reform the self-indulgence of his tribe, but polygamy did not occur to him as a matter for reformation, though freely practised by his own people. Monogamy was first made a matter of legislation in the west by the Emperor Justinian, a Roman and a pagan Jurist, but, like many other Roman virtues, it became something of a back number for many centuries under the onslaughts of Christianity.

Islam came to reform the abuses of the world at large, and took notice of polygamy as well. It brought it under drastic restrictions and made it next to an impossibility in ordinary case. The institution, as such, was not without its use under special circumstances. A house with no children is a graveyard. The first marriage may prove barren for years, and if the wife is responsible for the misfortune, a second marriage would be the only thing in requisition in the case of those whose happiness remains incomplete without children. In India, such marriages take place often, at the instance of the first wife herself. It was to meet such contingencies of an exceptional character that polygamy received countenance in Islam. If the females sometimes outnumber the males and this occurs in and after a period of war it furnishes another argument for bringing more than one wife under one roof, to ward off evil in its most heinous form. It was in the days of wars, when the number of women had increased in Medina, that the Qur-anic verses allowing polygamy under certain restrictions were revealed. The sexual instinct is,

after all, a life tendency, and cannot, become extinct. The curbing of the passions is unhealthy, and the institution of celibacy has always and everywhere created a spirit of moral leprosy. Men and women are entitled, under the demands of Nature, to claim companionship of each other in lawful wedlock, but promiscuous intermixture is pernicious to society. Is not polygamy — carried on, of course, with Muslim restriction — the only remedy under such circumstances? We do not advocate it — we resort to it only by way of remedy; and Islam can dispense with it without affecting its tenets.

Europe has, since the war, been facing the same problem. The war has left women outnumbering men in the West to an appalling extent. Unmarried life is unnatural and unhealthy. It is a sin, if sin means anything and everything that is damaging to human progress.

But has Christendom been purged of polygamy? Marriage, in its bald form, is after all a connection of man and woman. Our interest in the coming generation and the consciousness of paternity gives sanctity to the institution of marriage. Take it in its initial form, and the Christian in the West would appear to be more of a polygamist than the Muslim anywhere. The latter, in very rare cases (and, moreover, in a legalized form), does that which the former does unscrupulously and in an illegal form. But what an irony of fate ! The former action, so healthy in its consequences, is branded as an offence which the law calls bigamy, while the latter, so flagrant and shameless in its methods, is practised with impunity, and the law takes no cognizance of it. Legislation should not succumb to sentimentality; its mission should be the betterment of human society and to contribute to the happiness of the society. There are two evils which the world, from the beginning, has never been able to remedy – the uncontrolled brutality of man when under the excitement of his passions, and the weakness of a woman when she has become a victim thereto; and what is the result? Bastardy for the child, misery and shame for the mother. Has religion or civilization, in this matter, schemed out anything to remedy this double evil? Muslim lands are free from it. Why should the innocent children, who were not consulted by their parents as to their being brought into this world to a life of infamy, be debarred from inheriting the name and property of their

fathers? England had, in a manner, to recognize "war babies," and thus give indirect countenance to polygamy. But that was a temporary measure. Humanitarian principles have come forward to provide "Houses of Rescue" and "Foundling Hospitals" to save these innocent victims of human depravity from misery and indigence, but what about the ignominy that stigmatizes their whole life and leaves their mothers in the lurch? Could they not have been saved from all this, if the mothers had been allowed by the law to have the honourable position of a second wife, where the first marriage, for various reasons, could not accomplish the matrimonial purpose ?

Polygamy was observed indiscriminately before Islam as I said before, and there was no restriction as to the number of a man's wives. He could have as many as he wished. Islam regulated the number if special circumstances did unavoidably necessitate plurality of wives. There are certain contingencies in life where polygamy alone can check incontinence. The Muslim conception of evil is very vast. Islam regards it from various angles, and one of them is the hygienic angle. In connubial life, there arise occasions when man and woman should separate from each other for hygienic reasons. For instance, woman labours under certain disabilities, for a week, in every month. The days of pregnancy, and the time of suckling a child are further disabilities that would last at least for eighteen months. In the interest of the health of the child and of the mother, Islam strongly recommends that husband and wife should not share beds under these conditions. In this respect prophet Muhammad advised us to exercise control over our passions and suggested various ways which might help us, of which fasting was one. But in no case would he leave any loophole for misconduct. He would rather allow the husband to have the company of another wife than violate hygienic laws or pursue the course of incontinence; and if we observe these injunctions strictly, the number of wives will come to four.

An advocate of equality between man and woman would demand polyandry—plurality of husbands. Apart from the fact that woman, and not man, labours under the disability aforesaid, there are other reasons for prohibiting polyandry, hygienic as well as such as will help the proper bringing up of children. For example, the ascertaining of parentage is essen-

tial on each birth, to ensure the performance of natural obligations such as the rearing of children. In polygamy we can ascertain maternity and paternity both, but in the case of polyandry we cannot ascertain the latter.

Moreover, all kinds of venereal diseases follow polyandric connection. Some of the hilly districts in the Himalayan mountains, where polyandry is observed, are notorious homes for such diseases. It is now an established fact that these maladies come from woman. She, and not man, becomes the first victim of it. Connection with more than one man brings disease to the female sex.

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